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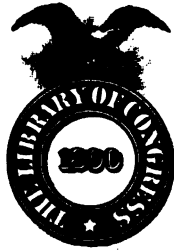
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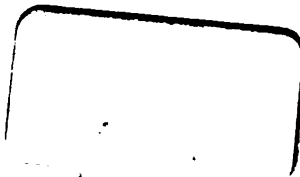
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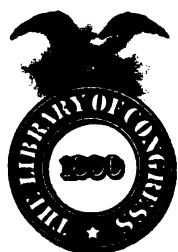
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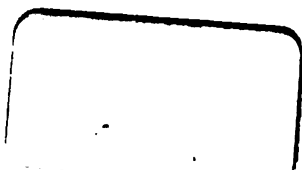


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HEARINGS

BEFORE THE

U.S. COMMITTEE ON INTERSTATE
AND FOREIGN COMMERCE

704
153-

OF THE

HOUSE OF REPRESENTATIVES

ON

H. R. 13841

CAR SHORTAGE AND
RECIPROCAL DEMURRAGE

WASHINGTON
GOVERNMENT PRINTING OFFICE
1908

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THE CULBERSON-SMITH CAR AND TRANSPORTATION SERVICE BILL.

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Saturday, February 15, 1908.

The meeting was called to order at 10.45 a. m., Hon. W. P. Hepburn in the chair.

STATEMENT OF MR. S. H. COWAN, REPRESENTING THE AMERICAN NATIONAL LIVE STOCK ASSOCIATION, HEADQUARTERS DENVER, COLO., AND CATTLE RAISERS' ASSOCIATION OF TEXAS, HEADQUARTERS FORT WORTH, TEX.

The CHAIRMAN. Mr. Cowan, this meeting was called at your suggestion in connection with the matter of the transportation service bill upon which you desire to be heard. You may take the lead in this matter, presenting the views of yourself and such gentlemen as may desire to be heard. You are probably aware, of course, that we will have to be brief, as we have no power to sit during the sessions of the House.

Mr. COWAN. Mr Chairman and gentlemen of the committee, we have prepared, in form which you find in front of you, the bill that we advocate to secure better railroad service in the matter of furnishing cars and in the transportation service, the object of those whom I represent being to avoid the enormous losses that have been happening, are continually happening, and will continually happen, without some penalties, in the transportation of live stock, particularly in that territory west of the Mississippi River.

The American National Live Stock Association represents substantially all of the organized live-stock people, including associations in Texas, Iowa, Kansas, Colorado, South Dakota, Montana, and various other States, as well as the Territories.

The Cattle Raisers' Association of Texas is an organization which represents particularly the cattle raisers of the Southwestern States, although it is not confined to that territory, having some 2,000 members, representing, I believe, probably 5,000,000 head of cattle.

You understand that the transportation of live stock is one of the most important means whereby the business is carried on, through the methods of transporting them from places of production to places of feeding and then to the markets. And being perishable, when ready for the market delay in the matter of furnishing cars or in the speed with which they are carried to the market causes loss which is serious, considering the accumulated labor of those who work for their living that way.

The CHAIRMAN. What will be the shrinkage on the steers in transit from, say, Dallas or Fort Worth to Chicago?

Mr. COWAN. The shrinkage would be about 50 pounds in the normal transportation if they were carried through on a speed of something

like 16 miles per hour, which is considered moderate speed. The railroads profess to make a better speed than that under normal conditions, but within the last two years it has not been done.

The CHAIRMAN. Will there be any shrinkage in the carcass?

Mr. COWAN. Yes.

The CHAIRMAN. What per cent; I am speaking of the meat?

Mr. COWAN. I understand that the shrinkage in a thousand or twelve hundred pound steer will run about a pound per hour, or near that. Many instances happen, and the court records are full of testimony on that, where they have been actually weighed at the point of shipment and actually weighed at the point of destination; and where they have been weighed in such manner as to show how much loss there will be if going through in normal time, and how much more if they leave late twenty-four hours or longer. In addition, an extra delay to the cattle, means a deterioration in the quality of the cattle. As commission men in the yards will tell you, and every cattleman will tell you, the loss is composed of two items, the shrinkage in the weight of the cattle and in the loss by reason of deteriorated condition which the cattle show when offered on the market after unreasonable delay, they being denominated as "stale" by the buyers of the packing houses, and those who buy for export and who ship into the country for slaughter.

The CHAIRMAN. Does that increase their temperature?

Mr. COWAN. In some instances, yes; but mainly from the fact that when you have been feeding cattle on cotton-seed meal in Oklahoma, Texas, or in Kansas, by mixing grain, and then take them out and stop that, you do not have the facilities nor the character of the food, and you can only give them hay. That being out of the ordinary condition in which they have existed, they seriously deteriorate, and the longer they are kept on the road the worse it is. Furthermore, when cattle are fattened on grass and are ready for the market, if they are ready for shipment and are held in a herd, or put in pens or close pastures, they begin to deteriorate from the time they are gathered off the range until they are shipped. Delays are very serious in that particular, and delays are also very serious from the standpoint of carrying on the business at all. For instance, I have a statement by Mr. S. H. Burnett, one of the large operators in the cattle business, that he would put in the pasture in Kansas about 4,000 steers this year if he knew he could get cars for shipment. Last year he was delayed forty-five days after the cattle were ready for shipment; in the meantime the grass became hard and the cattle did not thrive nor do well, whereas if they could have been gotten away in time the cattle would have gotten fat. And that is an instance of thousands that happen all over the country.

I suppose that the committee is informed in regard to those matters, and because of the shortness of time I will ask permission to file with the committee the testimony taken before the Interstate Commerce Commission last January in a case involving the question of rates, wherein the railroads claim that rates should not be reduced because they had to give a special service, and the witnesses testified as to what the character of the special service was. The attorneys of the railroad were present and cross-examined the witnesses, and I have had the evidence copied from the records of the Interstate Commerce Commission, and herewith file it.

Following is the testimony referred to:

Testimony taken before the Interstate Commerce Commission in case of Cattle Raisers' Association of Texas v. M., K. & T. Railway Company et al., at Denver, January 23, Amarillo, Tex., January 25, and Fort Worth, January 27 and 28, 1907.

C. W. MERCHANT (page 1916).

Mr. COWAN. You live at Abilene, Tex.?

Mr. MERCHANT. Yes, sir.

Mr. COWAN. And have ranches in New Mexico and Texas?

Mr. MERCHANT. Yes, sir.

Mr. COWAN. Is it not a fact that the time the railroads now require for the transportation of live stock is a greater length of time from the point of origin to destination, that it formerly was?

Mr. MERCHANT. Yes, sir; that is my experience.

Mr. COWAN. Has that become so that it is the usual course of business?

Mr. MERCHANT. Yes, sir; my experience—what cattle I have shipped—it takes about twelve to twenty-four hours as a usual thing to get into the market longer than it did a few years ago.

Mr. COWAN. Twelve to twenty-four hours longer?

Mr. MERCHANT. Yes, sir.

Mr. COWAN. Say you are shipping from New Mexico to Kansas City, how long does it take now?

Mr. MERCHANT. The cattle I shipped last fall, it took about four days and nights from the time they were loaded at Carlsbad until they arrived at Kansas City.

Mr. COWAN. You are well acquainted with cattlemen throughout the country, are you not?

Mr. MERCHANT. I believe so.

Mr. COWAN. Is it or not a matter of common knowledge among stockmen that it requires a great deal more time than formerly in the transportation of cattle from the point of shipment to the markets?

Mr. MERCHANT. Yes, sir.

Mr. COWAN. Do you travel about a good deal?

Mr. MERCHANT. Yes, sir; nearly all the time.

Mr. COWAN. In doing so, have you been watching what use has been made of stock cars?

Mr. MERCHANT. Yes, sir. We have been trying to find out the cause of the shortage they claim on stock cars. Our experience is that there is not a train of freight switched off the switches but what has got more or less stock cars loaded with other freight—railroad ties, coke, coal, and other freight. That is so in almost every train I have taken notice of the last two years on the Santa and Texas and Pacific roads, the roads I load on.

Mr. COWAN. In all respects is the service increasingly worse than it used to be?

Mr. MERCHANT. Oh, it is worse.

Commissioner PROUTY. Is it growing worse?

Mr. COWAN. I say is the service growing worse?

Mr. MERCHANT. The service has been growing worse the last four or five years.

Mr. COWAN. Is it not a fact that the trains in which live stock are carried are very much longer and heavier trains now than they were before the rates were raised?

Mr. MERCHANT. Yes, sir.

Mr. COWAN. That is a matter that anybody can see every day?

Mr. MERCHANT. Anybody can see it. Then we have to wait anywhere from two to four weeks for cars the last two years, both on the Santa Fe System and the Texas and Pacific. I had cattle twenty-one days down at Carlsbad before I got cars. I was four days getting to Kansas City with them. I thought I would remedy it, and gathered another train of cattle and took them to the Texas and Pacific. I waited thirty days, and then went to Dallas, and there they would not promise me cars. I brought them back and turned them loose—a thousand of them.

Mr. COWAN. Will they live this winter?

Mr. MERCHANT. If we have another snowstorm or two, I do not think they will.

Mr. COWAN. That occurred frequently?

Mr. MERCHANT. Yes, sir; almost every neighbor we have in the southern part of New Mexico has experienced the same thing.

Mr. COWAN. Did you go to Kansas City with these cattle?

Mr. MERCHANT. No, sir; my son went.

Mr. COWAN. Do you know how many cars there were in the train?

Mr. MERCHANT. He started with 15 and he said they kept hitching on freight until they had about 30 or 40. They started from Carlsbad with 15 cars of cattle. When they got to Roswell they commenced to hitch on other cars.

Mr. COWAN. Have you had any experience shipping from Fort Worth to Kansas City this year?

Mr. MERCHANT. I shipped from Big Springs. I tried to ship to Kansas City, but they were so long we had them sold at Fort Worth.

Mr. COWAN. How long from Big Springs to Fort Worth?

Mr. MERCHANT. About fifty hours. We had a little wreck and had some excuse for that.

Mr. COWAN. Well, considering their running time?

Mr. MERCHANT. Thirty-six to forty hours—about 270 miles.

Mr. COWAN. There is no such thing as fast speed in cattle shipments now?

Mr. MERCHANT. No, sir; we do not expect it.

Mr. COWAN. If it happens, it is an accident in that part of the country?

Mr. MERCHANT. Sure.

Mr. COWAN. That is all.

Commissioner PROUTY. Any cross-examination?

Mr. WHITTED. You say that trains are longer now than they used to be?

Mr. MERCHANT. Yes, sir; there are more cars to the engine now than there used to be.

Mr. WHITTED. They are using a good deal larger engines now than they used to, are they not?

Mr. MERCHANT. They claim to have larger engines.

Mr. WHITTED. What roads, particularly, do you ship over?

Mr. MERCHANT. The Santa Fe and Texas and Pacific are the ones I am on.

Mr. WHITTED. Those are the only ones you have been shipping over?

Mr. MERCHANT. The only ones the last two years.

Mr. WHITTED. That is all.

J. W. VICKERS (page 1918).

Mr. COWAN. Where do you live?

Mr. VICKERS. In Los Angeles most of the time and in Arizona part of the time.

Mr. COWAN. State your business.

Mr. VICKERS. I am a stock grower.

Mr. COWAN. Where?

Mr. VICKERS. My principal ranges are in Arizona.

Mr. COWAN. You are in the cattle business?

Mr. VICKERS. Yes, sir.

Mr. COWAN. How many head of cattle have you?

Mr. VICKERS. Ten thousand or more.

Mr. COWAN. You have been engaged in the business how long?

Mr. VICKERS. About twenty-three years.

Mr. COWAN. Are you well acquainted with the situation in the transportation of live stock from that country to the markets and in Arizona and southern California generally?

Mr. VICKERS. Yes, sir; I have done a great deal of shipping and know considerable about it.

Mr. COWAN. State whether or not it requires a longer time now for the transportation of live stock than it did three or four or five or six years ago.

Mr. VICKERS. As a rule it does.

Mr. COWAN. That has become practically the routine business?

Mr. VICKERS. We do not know when we are going to get anywhere now when we start. We used to be able to calculate pretty closely what market we would make—in other words, what time it would take—and the district agents used to be able to tell us pretty closely what time it would take to get a train from a loading point to destination, but now we do not get much satisfaction from the representatives at loading points and scarcely any promptitude of service on the road.

Mr. COWAN. Has the service in point of speed made been growing worse from year to year?

Mr. VICKERS. Yes, sir.

Mr. COWAN. Do you get any fast service in the transportation of live stock now as a rule?

Mr. VICKERS. Well, as a rule, no. Occasionally we get very good runs.

Mr. COWAN. Compared to five or six years ago, what are the sizes of the stock trains now?

Mr. VICKERS. Well, the trains are long. The rule now is not to put anything over the road except in long trains, and it is the exception if one can get any service with the short train. We used to consider 15 cars a good train load, but so far as I know that is not the case any more.

Mr. COWAN. About how many now?

Mr. VICKERS. Well, from 20 to 40, and if one starts with 20 he is likely to get something else hooked on before he gets through.

Mr. COWAN. Do you ship over the Santa Fe and Southern Pacific?

Mr. VICKERS. Well, I have shipped over both roads.

Mr. COWAN. Do you know whether stock cars are used in the transportation of other freight?

Mr. VICKERS. I know they are.

Mr. COWAN. Is that practice increasing of recent years?

Mr. VICKERS. Well, I think in our section it has always been done more or less. I think it is being done more than it used to be. I think they have more stock cars than they used to have. I know that the Southern Pacific does. They did not use to have stock cars. They had what they called combination cars. Now, they have stock cars and they are used for many purposes other than loading stock.

Mr. COWAN. To what do you attribute the increasingly bad service, according to your observation? The service is growing worse. To what do you attribute it?

Mr. VICKERS. I think it is largely owing to the tonnage basis that is required by the companies. As I understand it, the western operatives are expected to do a great amount of tonnage and carry the most tonnage possible with a certain crew or engine, with all crews and engines, as it seems to us. That gives them trains bigger than they can handle and sometimes more than they can pull. Sometimes they have to cut them in two to get up a hill, and on a level they are hard to start without breaking in two. I have seen trains break in two because they were too long and heavy to stand the strain. They would pull out the drawbars, I think that is what they call them.

Mr. COWAN. Have you any particular facts you care to state?

Mr. VICKERS. I have no definite data at all.

Mr. COWAN. Anything further you desire to state in regard to the matter?

Mr. VICKERS. I think not.

Mr. COWAN. That is all.

Mr. WHITTED. How does the price of cattle at the present time compare with the price of cattle a year ago?

Mr. VICKERS. What kind of cattle?

Mr. WHITTED. Take the live stock in general. Has there been a rise or decline?

Mr. VICKERS. I think in the range country the prices are about the same. I understand that in Chicago the prices are better, that is, top cattle and top sheep.

Mr. WHITTED. How would the price be compared with two years ago, 1904?

Mr. VICKERS. I think the same answer would apply to two years ago as well as one year ago.

Mr. WHITTED. You ship to Kansas City and the Chicago markets?

Mr. VICKERS. Well, very seldom to Chicago. We have shipped a great many to Kansas City; that is, quite a number.

Mr. WHITTED. The price, you say, is approximately the same as two years ago?

Mr. VICKERS. In the range country stock cattle, I think so. There is some apprehension in places and classes.

Mr. WHITTED. How about the price in Chicago?

Mr. VICKERS. At Chicago I understand that top cattle are at a better price than they were a year ago or two years ago, top cattle and top sheep.

Mr. WHITTED. So there has been a rise in the price of cattle the last two or three years?

Mr. VICKERS. I think in finished cattle there is a better price than there was two years ago.

Mr. WHITTED. You complain about long trains. They have larger engines and haul longer trains in all kinds of traffic now, do they not, than they did a few years ago?

Mr. VICKERS. I think so. I do not think it applies to cattle alone. I think the orders and practice apply to all classes of freight.

Mr. WHITTED. There has been a general increase in the size of motive power and a general increase in all kinds of trains?

Mr. VICKERS. I think so.

Mr. WHITTED. They would not be able to handle the traffic if there was not such an increase, would they?

Mr. VICKERS. I think they got over the roads much faster before with trains they could handle than they do now.

Mr. WHITTED. I mean, taking the general increase of all kinds of traffic, if you do not increase the motive power and the train load you would not be able to handle it?

Mr. VICKERS. Well, as I intended to answer, I think with small trains and good time you could handle it better than you could with these over-sized trains and bad time.

Mr. WHITTED. That would involve a considerable increase in the cost of transportation on the part of the railroad, would it not, the number of engines and the number of crews?

Mr. VICKERS. Well, it would take more crews, but I think the railroad companies, of course I am not a railroad man, from observation I would be inclined to think you would do the business with so much more facility that you would make as much money as you are making now and give better service.

Mr. WHITTED. Your experience is confined entirely to the Santa Fe and the Southern Pacific?

Mr. VICKERS. No, sir.

Mr. WHITTED. I thought you said you shipped over those two roads only?

Mr. VICKERS. I was asked if I shipped over those two roads, and I said I had.

Mr. WHITTED. That is all.

JAMES A. LOCKHART (page 1930).

Mr. COWAN. Mr. Lockhart, you live at Colorado Springs?

Mr. LOCKHART. Yes, sir.

Mr. COWAN. Have you been in the cattle business in this country a great many years?

Mr. LOCKHART. Yes, sir.

Mr. COWAN. You are an extensive feeder and shipper?

Mr. LOCKHART. Yes, sir.

Mr. COWAN. State whether or not the time now required in transporting cattle from the point of origin to destination is longer than it was three, four, five, or six years ago?

Mr. LOCKHART. Very much longer.

Mr. COWAN. Can you illustrate it by any of your shipments as to the comparative time it takes now and what it took then?

Mr. LOCKHART. Yes, sir; we have had a great many shipments the last year. We shipped about 7,000 cattle and 26,000 sheep within the last year.

Mr. COWAN. From where?

Mr. LOCKHART. Principally after having gotten them to feed lots at Rocky Ford and Sugar City, Colo., but prior to that from the ranges from Wolcott, Colo., and Rifle, and some were brought to the market at Denver and elsewhere.

Mr. COWAN. What is the comparative time the last year in your shipments compared with what it was five years ago to Kansas City?

Mr. LOCKHART. I should think the difference would be in the neighborhood of 40 per cent.

Mr. COWAN. That is becoming an established practice, so you do not expect anything else, is it not?

Mr. LOCKHART. Yes, sir.

Mr. COWAN. How long does it take now from Rocky Ford to Kansas City?

Mr. LOCKHART. Sometimes three or four days.

Mr. COWAN. As a general rule, shipping your 7,000 head of cattle, what do you think it has averaged, approximately?

Mr. LOCKHART. We would not expect, with the service we get now, to get them there in less than four days and feed at one point between Rocky Ford or Sugar City, Colo.

Mr. COWAN. How far from there to Kansas City?

Mr. LOCKHART. I think in the neighborhood of 150 miles to Emporia.

Mr. COWAN. From Rocky Ford to Kansas City?

Mr. LOCKHART. About 582 miles, I think.

Mr. COWAN. Ten years ago how long would it take?

Mr. LOCKHART. We often went through in thirty hours, straight through with a train load.

Mr. COWAN. What is the size of the trans now compared with then?

Mr. LOCKHART. Very much longer.

Mr. COWAN. Take your own shipments, what number of cars did you start out with from Rocky Ford in the trains in which the cattle are shipped?

Mr. LOCKHART. We may start with 15 cars of cattle, or 20, but they have 30 or 40 cars of dead freight on there before we get near the market.

Mr. COWAN. What sort of dead freight?

Mr. LOCKHART. All sorts of stuff. I do not know just what it is.

Mr. COWAN. Have you paid any attention to the use of stock cars in the hauling of other freight, so as to be able to state whether that practice is increasing or not?

Mr. LOCKHART. Yes, sir; we can see hundreds of them almost every day, stock cars going by loaded with coke and ore and iron rails and all sorts of products.

Mr. COWAN. It is open to the observation of anybody who wants to see it.

Mr. LOCKHART. Oh, yes.

Mr. COWAN. Have you had difficulty in getting feed for feeding your cattle?

Mr. LOCKHART. Yes, sir; this year it is almost impossible to obtain shipments of grain to keep the cattle fed.

Mr. COWAN. Do you see these stock cars used for other purposes at times when there are cattle held for shipment in the vicinity of stations?

Mr. LOCKHART. Yes, sir.

Mr. COWAN. Has that been happening all last fall?

Mr. LOCKHART. Oh, yes; they have been using them for every purpose except cattle as a rule.

Mr. COWAN. Is the service now performed more valuable or less valuable than it was five years ago or ten years ago?

Mr. LOCKHART. Valuable to the shipper?

Mr. COWAN. Yes; is the service more valuable or less valuable to the shipper?

Mr. LOCKHART. Very much less valuable.

Mr. COWAN. Has the price of feeding and fattening cattle increased?

Mr. LOCKHART. Yes, sir; it has some; but of course that depends altogether upon the market for the grain products. Last year it was higher than it is this year, depending largely on the crops produced in the grain-growing States.

Mr. COWAN. Has the labor and handling cost increased?

Mr. LOCKHART. Very much.

Mr. COWAN. Have the profits in feeding cattle increased on an average, say, comparing now with 1900? Is it more profitable or less profitable than it was then?

Mr. LOCKHART. As a general thing, feeding cattle grain and for fattening purposes for large markets has been very unprofitable for a number of years.

Mr. COWAN. There is no certain profit?

Mr. LOCKHART. No, sir.

Mr. COWAN. Is it speculative?

Mr. LOCKHART. Yes, sir.

Mr. COWAN. I believe that is all, unless you have some point to suggest in respect to the matter of supplying cars or the character of the service.

Mr. LOCKHART. I would say that unless we get some better service from the railroad companies, I speak now from the standpoint of the feeder, we will have to discontinue the business of feeding cattle. To illustrate, I went to Kansas City a short time ago and purchased grain in the elevators, and went to the general manager of the Santa Fe and told him that I had purchased this grain and that my cattle to the extent of 3,000 or 4,000 head were on feed, and that unless I could get that grain to them I would have to ship the cattle on the open market and stand a loss of \$25,000 to \$40,000. Mr. Hurley assured me that he would do everything in his power to send the grain and to notify him as soon as I had the grain secured at certain points. I was fearful that if I purchased it at Wichita and other large points I would be unable to get it. I purchased at Burdett, Kans., and Lost Springs, Kans., and notified Mr. Hurley and the division superintendent between Topeka and where we feed at Rocky Ford. They seem to be unable to move that corn. After I got the corn they were unable to furnish the cars. For instance, to indicate what kind of service we are getting, I have a memorandum [producing memorandum] of the cars we shipped, and in one instance I was eight days in getting a car moved 62 miles from Lamar to Rocky Ford. We could send teams and haul it up within that time. To indicate further, I will state that car No. 1884 was billed at Lamar the 17th day of December and got into Rocky Ford, in the yards, on the 29th day of

December, 62 miles. On December 15 car No. 3769 was invoiced to us, 88,000 pounds of corn in it, and it has not got in yet.

Mr. COWAN. That will be sufficient illustration for that purpose. The business of feeding cattle in this country, if they were afforded the opportunity of transportation would furnish a large amount of westbound traffic, bringing grain from Kansas and Colorado points for feeding, would it not?

Mr. LOCKHART. Yes, sir.

Mr. COWAN. But if you can not get the service in hauling the corn and transporting the cattle back, you say you will have to go out of the business?

Mr. LOCKHART. Yes, sir; to illustrate, I had 2,520 sheep at La Junta last Friday evening. I was notified Friday evening that the cars would be there Saturday. We put the sheep into the pens to load out. Those sheep have been in the yards since.

Mr. COWAN. These things you have been reciting have been happening to a great many other people in other localities, have they not?

Mr. LOCKHART. Yes, sir; in the vicinity in which I have any knowledge in Colorado.

J. M. BOARDMAN (page 1937).

Mr. COWAN. Mr. Boardman, state where you live.

Mr. BOARDMAN. In Helena, Mont.

Mr. COWAN. You are engaged in the cattle business?

Mr. BOARDMAN. Yes, sir.

Mr. COWAN. Extensively engaged in that business?

Mr. BOARDMAN. Quite so.

Mr. COWAN. You have been for a great many years?

Mr. BOARDMAN. Thirty-eight years.

Mr. COWAN. You are well acquainted with conditions in the transportation of cattle from the Northwestern country to the markets?

Mr. BOARDMAN. Yes, sir.

Mr. COWAN. Has the time which is used actually in the transportation of cattle to the markets increased from Montana points to Chicago the last few years compared to what it was previously?

Mr. BOARDMAN. As a rule it has; but the difference has been more noticeable as the season of beef shipments is late. In other words, the early part of the shipment, the service and time is much better than the later shipments.

Mr. COWAN. What length of time do you expect now compared to what you had a few years ago in going to Chicago? How much longer does it take?

Mr. BOARDMAN. Well, in the beginning of the season we would naturally load a train to make the Chicago market on a certain day, on the old day of shipment, but I found out in our shipments this year, in fact, I found it out last year, that we had to give the railroads a day or a day and a half longer to make the same markets, and then sometimes we would fall down.

Mr. COWAN. Has that become a usual thing in the transportation of cattle from Montana to Chicago?

Mr. BOARDMAN. I think my experience would be universally that of other shippers.

Mr. COWAN. Do you know whether there is an extensive use of stock cars in handling other freight, in your observation?

Mr. BOARDMAN. I have noticed that to quite an extent. Of course our shipments to market—our beef shipments—are largely confined to the Great Northern System, but I have noticed stock cars—they have had to use mostly foreign cars of their own. In fact, they had very few of any kind of cars fit for the shipment of beef, so that they had to employ foreign cars. I have seen those foreign cars going in both ways—east and west—loaded with such stuff as shingles, coke, and rails.

Mr. COWAN. During the shipping season?

Mr. BOARDMAN. Yes, sir; I have seen them when cattlemen were crying for cars coming to the east loaded with ties, rails, or something of that kind, various things, and I have seen in the same train with cattle going east a number of cars loaded with shingles.

Mr. COWAN. Stock cars?

Mr. BOARDMAN. Stock cars.

Mr. COWAN. Is that a frequent occurrence?

Mr. BOARDMAN. Well, it is not an unusual occurrence. Of course, while there are very few stock trains that do not go out with dead freight, the dead freight is not always loaded into such cars.

Mr. COWAN. The size of trains has increased throughout the country so far as your experience goes, has it not?

Mr. BOARDMAN. They have more than doubled.

Mr. COWAN. Within what time?

Mr. BOARDMAN. I have seen stock trains from the loading point start out with 40 cars—25 to 30 is considered a stock train—but when we get as far east as Barnesville two or three trains are put together.

Mr. COWAN. How many cars?

Mr. BOARDMAN. From 40 up.

Mr. COWAN. From 40 up?

Mr. BOARDMAN. Yes, sir.

Mr. COWAN. You are now the president of the Western Montana Stock Growers' Association, are you not?

Mr. BOARDMAN. Yes, sir.

Mr. COWAN. You have been giving attention to this subject?

Mr. BOARDMAN. Yes, sir.

Mr. COWAN. The service has materially deteriorated in the country, the character or quality of it, has it not?

Mr. BOARDMAN. Oh, yes; the service has run down. The general service given the live-stock shipments is very different from what it was a few years ago.

Mr. COWAN. And that is so all over the country?

Mr. BOARDMAN. I think so.

Mr. COWAN. You have heard a number of experienced gentlemen testify here this morning, and the opinions they have expressed?

Mr. BOARDMAN. Yes, sir.

Mr. COWAN. Do they coincide with your judgment and opinion?

Mr. BOARDMAN. Yes, sir.

Mr. COWAN. That is all.

Mr. WHITTED. Is the price of cattle higher this year than it was last year?

Mr. BOARDMAN. Do you mean by that in 1906 or 1907?

Mr. WHITTED. 1906 higher than 1905?

Mr. BOARDMAN. Yes; there was a little advance, but I am speaking from a range standpoint.

Mr. WHITTED. I am asking about the price at Kansas City, Omaha, and Chicago.

Mr. BOARDMAN. Do you wish my answer confined to the value of range cattle?

Mr. WHITTED. I am asking you the value of cattle at the market.

Mr. BOARDMAN. There has been some advance.

Mr. WHITTED. It was higher in 1906 than it was in 1904, was it not?

Mr. BOARDMAN. Yes; that is by reason of the cattle having been considerably better than they were the year before.

Mr. WHITTED. That is all.

Mr. COWAN. I want to ask Mr. Boardman one more question. Mr. Boardman, is it not a fact that the quality and class of cattle has been better in 1906 than it was in 1905?

Mr. BOARDMAN. Yes; that is what I intended to answer.

Commissioner PROUTY. I understood him to say that.

B. PRESTON (page 1939).

Mr. COWAN. Mr. Preston, what is your business?

Mr. PRESTON. Farmer and feeder.

Mr. COWAN. Where?

Mr. PRESTON. At Fort Collins.

Mr. COWAN. What is your experience in respect to the matter of the transportation of live stock which we have been making inquiries about? You have heard the inquiries here. What is your observation and experience about it?

Mr. PRESTON. It is not as good as we used to have. I do not know that in my particular case I have any great complaint on the run I have been getting. The service at the feed yards is where I have had the trouble—getting loaded and unloaded and getting out.

Mr. COWAN. What time do you load at Fort Collins for Omaha's Monday morning market?

Mr. PRESTON. We do not go out. I have no particular complaint on the runs we have been getting out of our feed yards to Omaha, St. Joe, and Chicago. The runs have been fair so far.

Mr. COWAN. What time do you load at Fort Collins to reach Monday's morning market at Omaha?

Mr. PRESTON. We do not handle our stuff; I can not answer that. We do not handle our stuff the way you people do cattle. We load our stuff in the morning at Fort Collins and go to a feed yard—that is, strictly sheep. We take them to Valley or Fremont and hold them three or four days.

Mr. COWAN. How long does it take from Fort Collins to Valley?

Mr. PRESTON. Thirty hours.

Mr. COWAN. How far is it?

Mr. PRESTON. Five hundred miles.

Mr. COWAN. Has the size of the trains in which live stock is carried increased?

Mr. PRESTON. Yes, sir.

Mr. COWAN. Have you any specific cases of bad service in mind?

Mr. PRESTON. Yes; I have one particular case that came on last fall.

Mr. COWAN. State that, please.

Mr. PRESTON. In the month of August I have been making it a practice the last twelve or fourteen years to go down to New Mexico and buy sheep. I bought about 20,000 down there, and I ordered my cars in August to be loaded, I think about 10,000 in one shipment, in Albuquerque, on the 1st of November. I was promised by the Santa Fee assistant live-stock agent at El Paso that there would be no question about cars this year. I saw I was being delayed two or three days with my shipment, so I wrote the agent at Albuquerque and told him that I would not be in Albuquerque with my 10,000 lambs until about the 2d or 3d. On the 2d or 3d I went down there on the west bank of the Rio Grande River. I conferred with their agent and chief clerk at Albuquerque from day to day—in fact, three or four times every day. He advised me to cross the river and get ready to load the following Wednesday. This was Sunday. I advised Mr. Moore not to get me across the river unless he felt sure that I was going to get cars, because there was neither feed nor water on the east side of the Rio Grande. He told me to come across. I came across with the lambs. He had us lined up, how we were to ship. I was to ship Wednesday and another man on Thursday, and so on. I got myself across. Wednesday came and no cars. Thursday came and he put another man in my place, took the cars rated to load after me and loaded them first. I held my stock until the next Monday. They had water one time in those days I held them there and comparatively nothing to eat. We could not get it.

The yards promised me that I could water them in the stock yards provided they passed Government inspection. They had passed. I could not get them in to get the water, and when I loaded those lambs they had shrunk so that they were not worth within 50 cents a head as much as they were when I brought them to be loaded on the cars on the 2d or 3d day of November; and when we loaded them we were all day loading them on account of the accommodations they have in Albuquerque—all one whole day until 11.30 at night. We started out from Albuquerque. We had a very nice train and good engine and made a fair run and got into La Junta one morning at 10 o'clock. There was hay enough in the La Junta yards to feed 3 cars of sheep, no more. I begged the agent all day to get me feed for those sheep. He did not do it. He had a car-load in the yards. I finally went to the agent and told him that I would give him thirty minutes to get that car of hay to the sheep; if, not, I would make complaint to the humane society. The car was there in twenty-five minutes. We loaded out the next day. We got through at 8.30 in the evening, loading that train. I think there were 27 or 28 cars. We did not leave the La Junta yards until the next day at 10.35. We stood there all night until 10.35 the next day. I went to Mr. Parker at La Junta and told him he had to pull me out or feed those sheep at my expense. In the La Junta yards there are no racks to feed from. We had to feed on the ground and they tramped it into the ground. Many of them were eating the wool off each other's backs when we loaded them at La Junta. After we started at 10.35 we made a fair run to Fort Collins. When I got those sheep unloaded there

were 1,000 at least that had the wool all eaten off of their backs. Some of them were absolutely naked, they were that near starved to death. When there is a patch of wool that big [indicating] off of a sheep and it goes on the market the packers pay us just the same price for that sheep as if it was shorn yesterday—from 50 cents to \$1 less than they would if the sheep had all its wool. I claim that the loss in the treatment we had on those 1,000 sheep was at least \$1 a head and on the whole shipment 50 cents a head.

Mr. COWAN. How long did it take you from La Junta to Fort Collins?

Mr. PRESTON. I think about twenty-eight or twenty-nine hours, a very fair run from La Junta to Fort Collins.

Mr. COWAN. How far is it?

Mr. PRESTON. About 275 miles. Another thing I wish to state. Myself and a great many others in Fort Collins have come to the conclusion, and have made up our minds, that unless we can get better service we must quit the business; that we have to quit it unless we can get better service. Those men that have come to that conclusion are men that have been buying 100,000 to 150,000 sheep in New Mexico every year and shipping them up to Fort Collins to feed.

Mr. COWAN. You mean better service in what particulars?

Mr. PRESTON. Well, better accommodations—that we can get cars. Our particular complaint is in getting the cars to put the stuff in. We bring them to the yards and have to hold them a week or two or three weeks. You must bear in mind that the stuff we deal in is lambs. They have just been taken away from their mothers. They go down so fast that it is almost impossible to get them back.

E. C. SOWDER.

Mr. COWAN. Mr. Sowder, you are an inspector of the Texas Cattle Raisers' Association, located at Amarillo?

Mr. SOWDER. Yes, sir.

Mr. COWAN. Your business is to inspect cattle at shipping points and to look after that business exclusively?

Mr. SOWDER. Yes, sir.

Mr. COWAN. Are you acquainted with the circumstances and conditions surrounding the transportation of cattle from the Panhandle of Texas to the markets and elsewhere?

Mr. SOWDER. Fairly well, yes, sir.

Mr. COWAN. Are you able to state whether or not the time that is now required or taken in the transportation of cattle to market, say, like Kansas City, has increased or decreased in recent years?

Mr. SOWDER. It has taken more time this last year than it did year before last.

Mr. COWAN. You testified in this case some three years ago?

Mr. SOWDER. Yes, sir.

Mr. COWAN. Does it take more time now than it did then?

Mr. SOWDER. Yes, sir; that is, they use more time.

Mr. COWAN. That is the usual course of the business?

Mr. SOWDER. Yes, sir. In 1905 I shipped quite a little stuff in the summer and fall myself and it generally went through without feeding, but part of the time I fed in Emporia.

Mr. COWAN. Do you see stock cars being used all over the country for other freight than cattle?

Mr. SOWDER. I see them loaded with coal, brick, stone, and some with railroad iron and ties coming this way.

Mr. COWAN. To what extent have the cars been loaded this last year with other freight than live stock?

Mr. SOWDER. To quite an extent. They have been used for hauling dead freight going west. I have seen 10, 15, or 20 stock cars in a train that have dead freight in them.

Mr. COWAN. Is it not a fact that it is a rare thing for cattle to go through to Kansas City from this territory without stopping to be unloaded between here and Kansas City on account of the thirty-six hour limit?

Mr. SOWDER. I do not know of any instance where we went through without unloading for feed. I know of several instances where it has taken as much as fifty or sixty hours to get to market from over there.

Mr. COWAN. Do you know how it is in shipments from New Mexico, like Portales?

Mr. SOWDER. I have not kept myself closely identified with them, only generally hearsay about that.

Mr. COWAN. Do you know anything about the Curtis Brothers' shipments?

Mr. SOWDER. The Curtis Brothers and Gus Myers are having quite a little bit of trouble all this fall getting here to Oklahoma. Tom Curtis told me the other day that he had the slowest service he ever knew in his life. He said that at one time when he got off the train the train pulled out and left him and he walked down the track 14 miles and overtook the train. Jim Curtis told me that a week ago, and said it was a matter of record that he did that; that in filing their claim against the Rock Island that it was made a matter of record that could not be gotten around.

Mr. COWAN. The man seemed to know that he would catch up if he persisted in walking?

Mr. SOWDER. He said that he had been three days getting down there, and he knew that it could not be very far ahead.

Mr. COWAN. Have there been any cattle held over this year because they could not get cars for shipment in the Panhandle district this year?

Mr. SOWDER. Yes, sir; there have been quite a few. Even if these could have gotten cars they could not afford to ship them because they shrunk so.

Mr. COWAN. Do you know what is the cause of this slow time that is made? Are you on the train sometimes and see the men?

Mr. SOWDER. I do know what the cause of it is, but they complain that the engines are too heavily loaded; in other places, that the track is in bad condition and they are not allowed to run fast.

Mr. COWAN. Did you see the orders in any case?

Mr. SOWDER. I do not know that I ever read them; I just heard conductors state to brakemen not to exceed 8 or 10 miles an hour over certain parts of the country. Some places they were so you could not make over 15 miles an hour; quite frequently I have heard it so stated.

Mr. COWAN. What would you say would be the average speed between division points between here and Kansas City?

Mr. SOWDER. The only one that I have figured on is where I have had cattle myself. In some instances I wanted to see what time they did make. I think it did at about 12 or 14 miles an hour—that is, taking the time from the time they leave here to the time they arrive at Kansas City. One train left here on a Thursday evening with five or six cars and it arrived at Kansas City after dark some time Sunday night.

Mr. COWAN. Now, as a usual thing, what time do cattlemen load their cattle here with a view to reaching Monday morning's market?

Mr. SOWDER. Some time Friday evening or Friday night.

Mr. COWAN. What would be in the general course of business the required time?

Mr. SOWDER. If they wanted to load their cattle on Saturday they would get into Kansas City before noon Monday. And if they do not get there before noon they can not show their cattle for sale before Tuesday.

At this point the witness was excused.

A. L. CHESHER (page 1907).

Mr. COWAN. Mr. Chesher, you are an inspector for the Cattle Raisers' Association of Texas?

Mr. CHESHER. Yes, sir.

Mr. COWAN. You are located at Portales, N. Mex.?

Mr. CHESHER. Yes, sir.

Mr. COWAN. You have been in the cattle business all your life, Mr. Chesher?

Mr. CHESHER. Yes, sir.

Mr. COWAN. Do you inspect shipments and look after the loading and shipping of cattle?

Mr. CHESHER. Yes, sir; I look after the loading of the cattle that is going out of the territory at Portales, Bovina, and Hartford.

Mr. COWAN. Have you made any observation as to the use of stock cars for the handling of other than live stock?

Mr. CHESHER. Yes, sir; I have noticed a good many cars going south loaded with brick, coal, and ties. I do not know that I ever saw any loaded with steel.

Mr. COWAN. Do you notice the cars down there at any time in that use when cattle are awaiting shipment?

Mr. CHESHER. I have seen them standing in the yards loaded with this plunder and waiting for stock cars. We stayed there in Bovina five weeks on one shipment.

Mr. COWAN. How long do the stock cars loaded with other materials stay there?

Mr. CHESHER. Three or four days and probably go on somewhere else.

Mr. COWAN. Quite a considerable number of cars?

Mr. CHESHER. I do not know that I ever saw ready more than two or three at a time in the yards at once.

Mr. COWAN. Do you know whether the time that is now required and has been required for the last year or two in transporting live stock to Kansas City has increased?

Mr. CHESHER. No, sir; it has decreased, the speed has.

Mr. COWAN. What is the usual practice now of cattle men compared to what it was four or five years ago?

Mr. CHESHER. We used to load at Portales and Bovina on Saturday and get in Kansas City Monday morning; now we load Friday.

Mr. COWAN. Do they ever ship in from that country without having to unload?

Mr. CHESHER. No, sir; they unload and feed all the time.

Mr. COWAN. What do think would be the average time that is made on live stock and has been made for the last year or two in shipments to Kansas City?

Mr. CHESHER. I do not know. From just a little shipment I made myself, I loaded it at Bovina and it was four days getting to St. Joseph in December.

Mr. COWAN. The time has been very much extended in actual practice?

Mr. CHESHER. Yes, sir.

Mr. COWAN. Is it not a fact that a great many cattle were not shipped to market this year because they could not get the cars?

Mr. CHESHER. Yes, sir; I saw one herd turned back at Bovina.

At this point the witness was excused.

J. H. PARRAMORE (page 2013).

Mr. COWAN. Mr. Parramore, I believe you live at Abilene, Tex.?

Mr. PARRAMORE. Yes, sir.

Mr. COWAN. You have a ranch in Arizona and one in Texas?

Mr. PARRAMORE. Yes, sir; I have a ranch on the line between Arizona and New Mexico.

Mr. COWAN. How far from El Paso?

Mr. PARRAMORE. My shipping point is 165 miles from El Paso, in New Mexico.

Mr. COWAN. What is the station from which you ship from your Arizona ranch?

Mr. PARRAMORE. I ship from a station called Rodeo.

Mr. COWAN. To where do you make shipments?

Mr. PARRAMORE. Well, I have been shipping to the Fort Worth market, so far. I have never run any cattle—since the packing house has been here at Fort Worth I have never run any cattle—to Kansas City. I have been shipping to Fort Worth. Sometimes I ship cattle over the Santa Fe to Kansas City—run up to Denver and transfer there.

Mr. COWAN. You testified in this case about a year and a half ago, Mr. Parramore, or a little more, did you not?

Mr. PARRAMORE. Yes; about a year and a half or two years ago.

Mr. COWAN. Will you state whether or not the service in point of time required in the transportation of live stock from the point of shipment to destination has grown poorer since that time or better?

Mr. PARRAMORE. Well, the service generally has grown poorer—scarcity of cars, motive power, and handling the stock generally.

Commissioner PROUTY. By what railroad does he ship, Mr. Cowan?

Mr. COWAN. I will show. What length of time does it take from your place, via the El Paso and Northeastern?

Mr. PARRAMORE. The Southwestern, we call it.

Mr. COWAN. The Southwestern to El Paso, and from El Paso over the Texas and Pacific, to reach Fort Worth?

Mr. PARRAMORE. Well, I must say that I have no complaint to make of the El Paso and Southwestern. They give us good runs. From El Paso to Fort Worth it is seesaw, drag-haul all the way—poor service.

Mr. COWAN. How long does it take from El Paso to Fort Worth?

Mr. PARRAMORE. I really do not know. We unload at Big Springs. I have not done a great deal of shipping—I have sold my cattle. But all the time there is complaint. We would expect them to be in market a certain day and they would get in the next day. We can not tell when we will hit the market. If we expect to get to Big Springs and get on the market a certain day, we have not been able to do it.

Mr. COWAN. What difficulty do you have in respect to getting cars and getting in and out of El Paso in making shipments? Just explain that and give instances.

Mr. PARRAMORE. I will explain it to you. I have had a great deal of trouble here in the last shipments in November and December. I think it was the 5th or 6th of November I went through El Paso, and two weeks previous to that I had written Mr. Ward a letter.

Commissioner PROUTY. Who is he?

Mr. PARRAMORE. The general superintendent of the Texas Pacific—I wrote from here to El Paso, I think. I asked him if he could not furnish me cars. I ordered cars at the same time through Mr. Simmons, the general superintendent of the El Paso and Southwestern. I wanted 20 cars; 10 cars to ship on the 10th from Rodeo and 10 cars to ship on the 20th of November—the 10th and 20th of November. I ordered 20 cars.

Mr. COWAN. For each shipment?

Mr. PARRAMORE. Each shipment. I think it was the 5th of November I went through El Paso. I heard nothing from Mr. Ward. I met Mr. Ward at Abilene and asked about running the cars out, and asked if he would not run the cars out, and said they would be returned right away. I got to El Paso on the 5th. I saw Mr. Simmons and he told me, I can get up enough cars to bring you into El Paso, but you had better see how you are going to get out of El Paso. I went down to the railroad agent, Mr. Elridge, and asked if Mr. Ward had said anything about cars. He said no. I said that I wrote Mr. Ward about it and talked with him personally about it. I said, I want the cars; I will load on the 10th at Rodeo and want to load out of here on the 11th; I do not want to run in my cattle and keep them here and wait until you get cars. I want them on the 11th. I said, wire me if you can furnish me cars to take my cattle out of El Paso. Well, I did not load until the 11th, because I did not get a telegram from him. On the 11th I got a telegram from him saying "Cars in sight to pull out your cattle." We loaded on the 11th and came into El Paso. They told me that I would have to pay freight on these cattle at El Paso; that they would not let any charges follow. I placed money in the bank to pay the freight to the El Paso and Southwestern. I came on down with the cattle and next morning I called up the banker—it was Sunday. I said, "Phone to the El Paso and Southwestern that you will pay the charges on these 12 cars of cattle." They took it up and finally agreed to let the charges

follow. I sold these cattle to Mr. Biggel. We got the cattle out of El Paso. We got in there, I think, about 11 o'clock at night. They left El Paso, were switched down there, and we left El Paso the next evening about 4 or 4.30 o'clock.

Commissioner PROUTY. That is, there was a delay from 11 o'clock one night until 4 o'clock the next afternoon?

Mr. PARRAMORE. Yes, sir. Then they went to Big Springs and were fed. I went back to the ranch.

Mr. Low. May it please the Commission, it seems to me that we might as well make the issue that naturally arises, that the Commissioners can not fix rates on poor service. In a case like this, where they agreed to furnish cars and did not do it, the law imposes the liability. The Commission can not make it any less or any greater. It seems to me that this testimony is immaterial.

Commissioner PROUTY. I do not think that we ought to hear much testimony as to specific instances, but the defendants claim that one reason why these rates ought not to be reduced is because the railroads are required to give expeditious service. They say that they do, in point of fact, expedite this service. The testimony has tended to show that, in point of fact, the service was not so expeditious as the carriers state. To that extent it seems to me that it would be material.

Mr. Low. It seems to me that the law fixes the liability. The carrier must furnish reasonable service or is liable.

Commissioner PROUTY. You insist that you are furnishing reasonable service, do you not?

Mr. Low. I do not. I do not think we are.

Commissioner PROUTY. What do you say a reasonable service would be?

Mr. Low. That would depend on many conditions that would apply at different places. I do not think any man can contend that the railway lines on particular lines are furnishing expeditious service. On some lines we are furnishing excellent service, but on these lines I do not think we are. To-morrow we may get our lines in shape and furnish good service. Rates are fixed on the basis of reasonable service. If we depart from reasonable service, the law gives a remedy.

Commissioner PROUTY. There might be a question as to what reasonable service is. I understand Mr. Cowan to claim that the railroads insist to-day that the service they gave seven or eight years ago ought not to be required now.

Mr. Low. That is a question of fact for the court and jury that tries the complaint.

Commissioner PROUTY. In fixing the rate, we must have in mind the service which is being rendered.

Mr. Low. Well, that is a legal question.

Commissioner PROUTY. We could not fix the rate unless we knew what service is to be covered by it.

Mr. Low. You fix it as to reasonable service.

Commissioner PROUTY. We will receive testimony tending to show about the time these carriers do accord to these shippers. Of course, we must determine when we fix the rate whether that time is a reasonable time or not, but I think we will receive testimony, not in respect to particular shipments, but in general respect to particular

shipments, but in respect to the general condition of things—how long, as a general thing, does it take to get these shipments from one place to another.

Mr. Low. I simply want to get into the record our objection.

Commissioner PROUTY. And in this case, the petition being for a through rate, Mr. Parramore might state what inconvenience he was put to in transferring his cattle at El Paso, so that he can contrast the present shipments with what would be done if the shipment were a through shipment.

Mr. COWAN. You may proceed, Mr. Parramore.

Mr. PARRAMORE. Well, we got the first train of cattle out. I was to load those cattle on the 20th. I saw the agent of the Texas Pacific road.

Commissioner PROUTY. You are talking now about the second shipment?

Mr. PARRAMORE. The second shipment. I went over to see Mr. Simmons, of the El Paso and Southwestern. He said, Mr. Parramore, we have not any cars to pull you, and unless the Texas Pacific furnish me the cars I will have to wait until coal and wood and such things come in and we will have to unload the cars and furnish cars to pull you out.

Commissioner PROUTY. How far is it from your station to El Paso?

Mr. PARRAMORE. One hundred and sixty-five miles. Well, I stayed there until the 20th rolled around. I heard nothing of the cars. I stayed there a week and then got on the train and came down to El Paso. We knew that there was a bunch of cattle to be shipped from Vanhorn, this side of El Paso, to California, 15 or 20 cars.

Mr. COWAN. They would be delivered?

Mr. PARRAMORE. Delivered through the Southern Pacific. These cattle cars were going to San Francisco. The Texas Pacific would unload the cattle at El Paso to the Southern Pacific. I asked if I could get those cars. I said, "Mr. Simmons, these cars are to be unloaded there. Can you get them to run these cars out and carry them to the ranch and load them back?" He said he was doing all he could and he was satisfied that he would get those cars and we would not be bothered at El Paso on the return. I went to see the freight agent of the Texas Pacific. I asked him about cars and he did not seem to know anything about it, and told me he had just had a wire that Mr. Simmons had taken the matter up with Mr. Ward, and they would not let those cars go out. I said, "I can get into El Paso, but what I want to do is to get out. There is no joint rate. I have to pay a local in." What am I to do? Just dump them into the pens and wait?" We had quite a time. I ordered 14. He said, "Ten times 14 are 140." I said, "What do you mean by that?" He said, "I will tell you. You give me \$140 and I will steal them when they come in over here and turn them over to Mr. Simmons." I felt indignant. I said, "I am no thief, and never hired a man to steal for me. It is a pretty come-off when we come here to be robbed right in the railroad office." He said, "One man up here at Deming offered \$20 for a man to do that." I said, "There may be men buying the railroad, but I'll be darned if I won't turn my cattle loose first. I do not have to ship them." I was hot. He said, "I was only joking." They went out. The fellow was going to hold me up. I got the cars to run the cattle. I got the cars and shipped my cattle and they got a good run.

Mr. ADAMSON. You do not get any such service?

Mr. COWAN. No; We know that we do not have it.

Now to give some samples that seem impossible to have happened: Mr. Preston, as shown in this testimony, said that he bought 10,000 lambs at Albuquerque, N. Mex., to ship to Fort Collins, Colo., to feed. There is a large business in that there. He had very great trouble in getting the cars; he was more than a month in getting them shipped. After they were shipped they were kept so long on the cars at various places before they arrived at Fort Collins that more than a thousand head of the lambs had the wool eaten off by the other sheep. A sheep feeder at Las Animas, I believe it was, or in that neighborhood, said that he was buying grain in Kansas to ship out for the purpose of feeding lambs. In order to get a car he had the grain shelled and sacked at a certain point at a cost of \$56, and loaded in a stock car so that it would go out, the distance being 250 or 300 miles from the point purchased on the line of the Santa Fe Railroad. This grain was over three weeks in getting to him, then it was carried 11 or 12 miles beyond his station, and the car had been three days at a station 11 miles beyond where he was, and he had not been able to get the car back.

The CHAIRMAN. Why should this be, Mr. Cowan? One would suppose that the interests of the railroad company would require them to make a speedy delivery.

Mr. COWAN. It is difficult for us to say, Mr. Hepburn, why it should be. The most we can say is that it is a fact; that it was not disputed and is not disputed. We seek not ourselves to manage the railroads, but to have the duty which they owe to a shipper performed, and a reasonable penalty imposed to enforce that duty so that the shipper may know what the railroads should do for them, and may compel the enforcement of that duty by the means which they see fit to use.

Mr. MANN. Was there any explanation by the Santa Fe people regarding this particular case?

Mr. COWAN. No, sir. This testimony was taken at Kansas City. The attorneys for the company were present; the live stock agent, I believe, was present, and they had a number of officials in the city or present. They did not at that time, or thereafter, give any excuse for it.

I wish to call your attention to some testimony taken at Fort Worth, if I can find it, but I can state it probably—and you will find it in this testimony; I haven't time to turn to it—will say that Mr. M. A. Low, whom you all know, representing the Rock Island Railroad, was present at the examination of the witnesses at Fort Worth. I was proving a lot of these facts in regard to the method of handling business, and Colonel Low objected to the testimony on the ground that it was of no importance in the case; that the question of rates was involved and not the question of service. Commissioner Prouty said (substantially): "We concede that to be the case, but you are contending that you ought to have this rate apply because of the character of the service you give. These people here contend that you do not give the service. Now, Mr. Low, do you contend that you give the service?" Mr. Low replied: "We do not." He plainly admitted, even in stronger language than I have indicated, that he did not give the service, but he said that the rate should be made on the basis of good service, and the railroad company held responsible

to the performance of the service. So that we have the admission from Mr. Low.

Mr. MANN. Who is Mr. Low?

Mr. COWAN. General counsel for the Rock Island. He has been the general representative in a great many things in Kansas City, a very strong man, and well known all over the western country. He has represented the Rock Island for a great many years.

Mr. ESCH. As a matter of fact, do the railroads in your section want this kind of freight business? Is it profitable?

Mr. COWAN. They want the business. The difficulty has been, for the most part, that the railroads do not exchange cars with each other for the last few years, and to that is traceable 75 to 80 per cent of the difficulty. For example, take a man living on the Fort Worth and Denver City Railway, connecting with the Santa Fe, the Frisco, and the Rock Island, over which you must go to market if you go at all. The Fort Worth and Denver City Railway Company will not permit its cars to be loaded for shipment to points beyond its line, and the Rock Island, the Frisco, and these other railroads will not permit their cars to go to that road for the purpose of being loaded. Therefore the shipper is put to the necessity of waiting until some foreign cars come to the line to be loaded, or is obliged to work some sort of a scheme. It is remarkable that these things exist, but, gentlemen of the committee, they are facts, and undisputed facts.

Mr. MANN. Is that owing in any degree to the legislation of the State of Texas?

Mr. COWAN. Oh, no, not at all; the conditions are just as bad in New Mexico, Colorado, Arizona, and they are just as bad in California.

Mr. WANGER. A great many people claim that that is a matter of self-defense. What reason do they give for limiting their cars to their own line?

Mr. COWAN. They tell you that when they let them get off their own line, they can not get them back. Everyone says the same thing. I will give you an example. Take the shipment of grain from Kansas and Oklahoma. All during year before last, 1906, and I know in a large part of the year 1907—whether it is so now or not I can not tell you, but I think it is substantially—you could not load a Rock Island car in Kansas or Oklahoma with grain to go off the Rock Island line in Texas. An enormous amount of grain is consumed south of Fort Worth and Dallas, which are the termini of the Rock Island road. The grain shipper was compelled to wait, unless he transferred the grain at Fort Worth, which of course he did not want to do because he had a right of reconsignment which he could not do with the Rock Island car. So it was with the Santa Fe, and with the Missouri, Kansas and Texas also, and the result was that the grain dealer was almost put out of the grain business. I mention that because I know about it.

The CHAIRMAN. What is that particular advantage that you spoke of? You said that the shipper did not want to make an exchange because he would lose an advantage of some character.

Mr. COWAN. He has the privilege of reconsigning the grain in a car, and if he were going to the trouble of unloading the grain,

in the time he has to make a reshipment of that grain and the difficulty may be to get the car from another road to reship it in.

Mr. Paramore has a large ranch in Arizona. The Phelps-Dodge road runs from El Paso out there, and he wanted to ship cattle to the Fort Worth market, but he has to make arrangements first with the railroad that leads to his ranch in order to get cars. The Texas and Pacific Railroad will not accept those cars at El Paso and the Texas and Pacific will not agree to furnish cars at a particular date. The result is that he has to take chances if he ships any cattle as to whether he can unload them at El Paso and get cars to ship them beyond.

Mr. MANN. Why do you say that the Texas and Pacific will not accept the cars?

Mr. COWAN. The Texas and Pacific stated that the reason they would not—they did not state here in the testimony that they would not accept the cars—I did not hear that statement, but the reason they will not permit their cars to go over their line is because they could not get them returned.

Mr. MANN. But you do not want a statement to go in the record to the effect that that railroad will not accept cars of freight delivered from another railroad company?

Mr. COWAN. I would not state that. I do not state that they will not accept the cars of another road, but I say they will not accept an equal exchange of cars, and that is what this bill provides for, that it will define the duties of the carrier to the shipper.

Mr. HUBBARD. In this specific instance that you gave, why would not the Texas and Pacific accept the cars? Was it because the first road would not turn them over?

Mr. COWAN. The first road will not turn them over until they get cars in exchange, for they would exhaust themselves entirely if they did that. We want the law to define what the duties of the carriers are to the shippers, not particularly with respect to live stock but in general, then to fix a reasonable penalty for not performing that duty. In order to aid the railroads in carrying out the purpose of the bill, we want to provide that when a railroad company delivers loaded cars to another it shall have the right, if it wants them, to demand delivery back to them within a reasonable time from the date of the demand as many suitable cars as it delivered loaded.

Mr. STEVENS. Supposing the receiving road does not deliver them?

Mr. COWAN. That is the object of the law, that it shall be the duty of the receiving road to do that.

Mr. STEVENS. What is the penalty if they do not?

Mr. COWAN. The penalty fixed in this bill is the damages plus the attorney's fees—the damages that result to the shipper on the part of the railroad company for not complying with that duty, and a penalty which the Government may, at its discretion, enforce at the direction of the Attorney-General and the Interstate Commerce Commission.

Mr. STEVENS. Up in our country, the Central Northwest, one of the railroads connecting several of the large termini—for example, the Chicago and Great Western—is in a receiver's hands. Suppose that it has an inadequate supply of equipment. It reaches Kansas City, Sioux City in Iowa, St. Paul, Minneapolis, Chicago, Des Moines, and other places. Now supposing that the Santa Fe or the Rock

Island, or whatever road it may be, delivers stock at Kansas City; the Great Northern, the Northern Pacific, and the Sioux line, deliver a lot of material at St. Paul and Minneapolis, and some other road delivers a considerable quantity at Sioux City. The Chicago and Great Western has not an adequate supply of cars, can not get them, and can not get money to buy them. What do you say that road should do?

Mr. COWAN. I will answer that question by asking you a question. Can a railroad company refuse to perform the duty of transporting interstate commerce?

Mr. STEVENS. It is ready to transport interstate commerce, but it has not the equipment and can not get it, yet the freight is offered. What are you going to do about it? The road is in a receiver's hands and could you collect a penalty?

Mr. COWAN. I do not know what a railroad company would do that did not have any cars, but I do think that the law ought to protect the shipper.

Mr. STEVENS. A great many railroads have not had ample equipment at all, recently. How are we going to compel a railroad company to get equipment when they say they can not get the cars and can not get money to buy them with?

Mr. COWAN. They say that, but that is not so shown by the annual reports of nearly all of the railroads. I will file with you a statement—but I must be brief because others are waiting to be heard—a statement which shows the comparative amount of equipment in ratio to the tonnage carried on 75,000 miles of the principal lines of railroads leading out of Chicago and St. Louis, taking in all of the trans-Missouri lines with the exception of the Union Pacific. These figures show the supply of equipment, moving cars and locomotives, up to the time the figures were made out by the Interstate Commerce Commission. It shows the increases in the traffic; that is to say, the increases in the tons carried 1 mile. We all know, and it is demonstrable, and the annual reports show, that the capacity of locomotives has very largely increased, so if you add the capacity and increase in number of both locomotives and cars on the 15 or 20 railroads leading out of Chicago to the south, the west, and the southwest you will see that it exceeded in 1906 the ratio to the tonnage in 1900. The frequent statement made of a shortage in cars is not only not true, but it is a misrepresentation; that is, when stated by people who know. Mr. Hill does not claim that there was a shortage of cars.

Mr. KENNEDY. The shortage of cars on a road would not prevent them from returning immediately, or in a reasonable time, cars that had been consigned to that road?

Mr. COWAN. Not at all.

Now, this bill contains two provisos in the first section that the railroad company is not to be subject to the penalties of the law for delays for unavoidable causes which could not be provided against by reasonable foresight and diligence. Certainly that is as liberal as anybody can ask. They are under penalty to use reasonable foresight and diligence to prepare themselves to perform the business in which they are engaged. Take a man, like numbers of people that we can point out, who have had to turn their cattle back on the range, who could not ship them during the season at all, and the men who could not ship their feed and who had to go out of busi-

ness, and could not utilize pasture. Hundreds of men have suffered severe losses. A man told me that he shipped a mowing machine in a carload of farming implements loaded at Chicago a month before his millet, which was under irrigation at Roswell, was ripe. He lost his crop because it did not get there. Are these things to be permitted, as they will if Congress does not define the duty of the railroads and put some reasonable penalty for the failure to perform the duty? If not, the railroads will themselves determine under what rules they will perform the service, and shall that be?

Now, in the western country, as Mr. Stevens knows, they want a reasonable service and a reasonable rate, and they can not get it on interstate trade unless the law defines the duty of the railroad first and sets the penalty. This requires the railroads to do that which they did do always right up to two and a half or three years ago, namely, to exchange cars with each other.

Mr. MANN. I would like to ask you, as a legal proposition, whether the Interstate Commerce Commission has passed upon its power, under the Hepburn law, to make rules and regulations which would govern the furnishing of cars and the interchange of cars, or anything of that sort?

Mr. COWAN. They hold that they have not. They can declare a through rate—but I think that has been decided.

Mr. MANN. When and how did they pass upon it?

Mr. COWAN. I can not just cite you the case, but they have decided that.

Mr. MANN. Is it in a case, or one of those instances where the Commission over night has decided what it should not or should do?

Mr. COWAN. I think in both. I think the expression is in a case that I had against the Texas and Pacific Railroad to compel the establishment of a through rate, in which I asked that they make an order respecting the interchange of cars. The Commission established the through rate, but declined to make any order respecting the exchange of cars, holding that they did not have the power under the law to do that.

Mr. MANN. I think when we passed that law that it gave them that power. If you can cite us a case under the decision, I will be greatly obliged.

Mr. COWAN. I think the Cattle Raisers' Association of Texas v. The Texas and Pacific Railroad was the case.

Mr. MANN. If it was that decision and it has been published can you send us a copy of it with your statement?

Mr. COWAN. I will try to find it and send it to the secretary of the committee.

The CHAIRMAN. Have you any doubt about their power under the law?

Mr. COWAN. I doubt if they have power to require an exchange of equipment.

Mr. KENNEDY. But that would be a reasonable regulation, would it not?

Mr. COWAN. Yes; it would.

Mr. KENNEDY. We conferred in express terms the power to make regulation.

Mr. COWAN. But I call your attention to the fact that the compulsory interchange of cars involves necessarily providing means whereby

the use would be paid for—the loss or destruction would be paid for—so that it will not be the taking of private property without just compensation, and providing means for adjusting the compensation. That this bill attempts to do, by providing that the Commission, in the first instance, may fix the compensation on loss or damage by injury or destruction, and if the railroad is not satisfied with that they have a right to apply to the United States court to have that fixed. Under that provision I do not think the law would be constitutional that required an exchange of cars, unless the law provided a means whereby a just compensation would be made for the use of the car which one railroad must deliver to another.

Mr. MANN. Do you think that the courts can decide what that just compensation is in advance of the taking upon a hypothetical case?

Mr. COWAN. I am disposed to think that might be done, but it is not certain that it can be done by any means. It is a difficult question.

Mr. MANN. Is not legislative power subject only to review by the courts as to reasonableness?

Mr. COWAN. Probably that is so, but if we take the analogy of condemnation proceedings we find a good deal in it that would bear out the idea that the courts may be given authority to do that. Certainly the Commission, in this bill, is given express authority to do that; but I was afraid if you gave the Commission the power to do that and did not give the right to appeal to a court to have it determine, particularly when it is for a past use, a past destruction, and a past injury, that the law would be unconstitutional.

Mr. RICHARDSON. Would not the court be exercising a legislative function?

Mr. COWAN. Not in determining what the damage was in the past, but in fixing a rule for the future probably that is correct. It is a very difficult question, and one that would require very close analysis to see how far the court would go.

Mr. MANN. Why do you not test the law we passed?

Mr. COWAN. We can not do it. What can the shipper do?

Mr. ADAMSON. Inasmuch as they do it voluntarily, let them go. Is it any more, under those circumstances, than reasonable regulations to provide that they shall do it in certain reasonable amounts?

Mr. COWAN. There is no doubt that Congress has the power to direct that to be done. I am sure that the Supreme Court of the United States in the case coming up from Minnesota has substantially held that. But that is not a question giving me any trouble whatever. Apart from the necessity of undertaking to test this law, let me appeal to the judgment of this committee just for a moment, that it can not hurt anybody if we plainly define the reasonable duty of the railroads. Although somebody may assume that somewhere else it is defined, it can not hurt anything to provide a reasonable remedy, the remedy being the right to go into any State, Territory, or Federal court and recover on the damage plus a reasonable amount for attorney's fees. That makes it automatic with the amount of the injury, and there is nothing else that will. We do not think it well to put in an arbitrary penalty to the shipper, but we fix a penalty which the Government itself can utilize if it desires to compel the observance of the law, which penalty goes only to the Government and not to the individual. The individual must be satisfied with the

damage plus attorney's fees, whereas the Government may enforce the penalty through the Attorney-General's office or under the direction of the Interstate Commerce Commission.

Now, assuming that there might be doubt as to what the powers of the Commission are under the present law; certainly the shippers are not receiving any benefit from that, and it is impracticable for them to do so. You take the shipper out in Iowa, Colorado, or Texas who ships five cars of cattle and is delayed a week in getting the cars after the cattle are at the pen—and that is quite usual—and he is seven or eight days in traveling the eight or nine hundred miles, so that he loses two or three dollars a head. He is out \$100 to \$200. If he could go into a justice's court or a county court and bring a simple suit for the violation by the railroad or a duty defined by Congress, then he has a remedy that he can enforce. But if he must go before the Interstate Commerce Commission for reparation, he will not do it. He does not do it and nobody does it; it is impracticable. You must give the people a fair opportunity to make the railroad respond in case of injuries done, and that is the object of this bill, and to enable the railroads themselves to better perform the service.

Mr. HUBBARD. Have the railroads themselves endeavored to establish any system the operation of which would tend to make it to the advantage of the road detaining the car to return it?

Mr. COWAN. Yes; they have had various rules on that subject, but those rules have never worked out to do the business. I hope you will excuse me for not going into the details of it, but the testimony is to the effect that they have had certain rules—

Mr. HUBBARD. What are the car-service rules in force?

Mr. COWAN. The car-service rules provide so much per day or per mile, but they have changed it so often that I am unable to tell you about it. It was 20 cents a day, it was 50 cents a day, and it was put at \$1 a day in some localities. It was 6 mills per mile in other localities—the rules have been so various that I can not tell about them.

Mr. HUBBARD. Have changes been made for the purpose of making the system more effective in compelling the return of cars?

Mr. COWAN. It was with that end in view, but it did not secure it, because the amount that was fixed as a per diem charge was not such as to keep the railroads from stealing cars from each other, as they call it.

Mr. HUBBARD. It was not large enough?

Mr. COWAN. If they had made it large enough it would have been burdensome to the railroads that wanted to do what is right.

Mr. KENNEDY. Can you state how many railroads in the country are in the Car Service Association?

Mr. COWAN. I think the car service associations have as members every railroad in the country, in different districts.

Mr. KENNEDY. Do not the railroads, in going into it, practically acknowledge their duty to send the cars where they must go?

Mr. COWAN. Yes. I was trying to find a report made by Commissioners Harlan and Lane upon an extensive investigation made at Minneapolis and Chicago about a year ago, which I wished to file.

The CHAIRMAN. Before you leave this subject I want to call your attention to section 2. It imposes upon the different railroads an obligation to furnish connecting lines, if demanded, as many cars as

have been received loaded for shipment. Take, for instance, the case of a road at Kansas City running to Chicago that has no such traffic as you have spoken of respecting the southwestern country, and it has just enough cars to do their local traffic in cattle. There comes a shipment from Texas for Chicago, and under the provisions of this law, if it was the Alton road, they would receive this Texas consignment, and the bill proposes that they shall deliver to that connecting line from which they receive that consignment an equal number of unloaded cars.

Mr. COWAN. An equal number of suitable cars.

The CHAIRMAN. Suitable cars, yes. In case of a road of that kind that has no provision for doing the particular business from the southwestern country, and has simply the equipment that is necessary to do the business that originates on its own line, do you think that Congress has the power to compel the Alton road, say, to deliver the equal number of suitable cars?

Mr. COWAN. In a reasonable time, yes, sir, I do; because they received that many, and the question as to what is a reasonable time must always be determined by the circumstances of the case; and it might, as to the Alton road, under such circumstances be a reasonable time to deliver them back after being carried to destination and unloaded—but practically it is not so, we all know that. Practically they are all engaged in the same line of business.

Mr. RICHARDSON. I would like to call your attention and receive an explanation of part of the first section of the bill:

And to supply within a reasonable time at its station or stations from which such shipper gives notice that he desires to ship such freight, at the date designated by such shipper, where that is within a reasonable time, sufficient suitable cars in which to load the same, and to promptly transport the same to its destination when destined to points upon the line of such railroad, then to promptly transport and deliver such freight in such loaded car or cars to the connecting carrier. * * *

Now, for instance, the Louisville and Nashville road, commencing at its beginning point, Cincinnati, and running through to New Orleans—suppose a large number of shippers demanded at the same time cars for shipment of their goods up and down the line, and make the time reasonable. Could any railroad possibly comply with that?

Mr. COWAN. Well, take a shipment of cotton for example—

Mr. RICHARDSON. How would you meet that? How; that is what I want to know.

Mr. COWAN. We provide also in the same section: Provided also, that whenever, by reason of any accidental or unavoidable cause which can not reasonably be provided against by the use of reasonable foresight and diligence, any such railroad company fails to so furnish cars, and uses all reasonable diligence to do so promptly after the happening of such accidental or unavoidable cause, it shall not, as to such failure in such case, be liable to the penalties herein prescribed.

Mr. RICHARDSON. My idea was that that proviso did not have reference to any such contingency as I stated at all.

Mr. COWAN. Yes; it is broad enough.

Mr. MANN. Take the case of the Georgia peach crop. Do you want to have one railroad have enough cars to be able to carry the whole crop?

Mr. COWAN. This does not declare that they shall own them.

Mr. MANN. But how can they get them? They can not get the cars.

Mr. COWAN. It would be impossible for me to tell how a railroad can get cars to handle that business. The railroads are bound to perform the service.

Mr. MANN. That is easy to say. You require a road that pulls that car to get the car back. How are you going to handle the Georgia peach crop under that provision?

Mr. COWAN. But what are we going to do if the railroad company in itself determines when and how it will furnish the cars? To-day the common law requires the doing of this particular thing, but does not fix any penalty for not doing it. The common law requires the furnishing of cars to-day in a reasonable time beyond question, and is recognized in every court in every State in the Union and by the Supreme Court of the United States. We are not requiring any greater duty, but we are fixing a method that defines the duty, defines the circumstances under which it is intended to be performed, and fixes a penalty in those cases, excepting in the exceptional cases, and we give the right to the shipper to go into any State, Territorial, or Federal court and enforce that right with a view to having the railroads perform only their common-law duties.

Mr. MANN. But this compels the railroad to do that which it is not in their power to do, so far as this is concerned.

The CHAIRMAN. This is not simply common-law duty. You take for instance the Georgia peach crop, which requires 5,000 refrigerator cars, and the shipments are made within thirty days. Now, here is a connecting road, a road, say, at the Tennessee line, that connects with some road in Georgia which gathers up, we will say, one-half of that crop. Here is a peculiar car that is used only once for a month in the year, and which the Tennessee road does not use at all because there is no business of that kind originating along its lines. It simply takes the car as a connecting line. Under the provisions of this bill they would be compelled to furnish, we will say, 2,500 cars of this peculiar make which the road does not use at all. I am asking now your opinion as a lawyer, have we the power to compel that Tennessee railroad to comply with the provisions of section 2 of your bill in that respect?

Mr. COWAN. I will answer that in the affirmative, and I am answering it upon my understanding of the meaning of the practical effect of section 2 in connection with the proviso of section 1. Certainly the railroad company could not by law be compelled to do anything that was impossible, but it can be compelled by law to use reasonable diligence in performing the service for which it is incorporated and which it customarily does perform. This law goes no further than to require the doing of the duty, exempting it when exceptional circumstances arise, provided always that it uses reasonable foresight and diligence in performing the service.

Mr. MANN. But the only exception that you make is "accidental or unavoidable cause, which can not reasonably be provided against by the use of reasonable foresight and diligence."

Mr. COWAN. Yes.

Mr. STEVENS. I want to ask your construction of the word "suitable" in section 2; that is, when a furniture car is furnished, will they have a right to demand a furniture back for it, or, as to a vehicle car, would they have a right to demand a vehicle car back?

Mr. COWAN. I do not know enough about the difference between a furniture car and any other car to answer that question. The reason the word "suitable" was put in was to avoid requiring them to deliver back the same sort of a car, because we know cars are suitable for traffic oftentimes that are not of the same sort. The idea was to have it flexible.

Mr. STEVENS. Now, we have this trouble at Minnesota Transfer, and that is one of the great freight transferring points of the country. The railroads coming in there from the west bring in a vast amount of freight for transfer. The western railroads have very large cars. The eastern railroads running from Minnesota Transfer east have small cars. What are you going to do to compel the transfer of small cars for large cars if the eastern roads have not got them?

Mr. KENNEDY. The eastern roads could comply with this law by returning in a reasonable time the car they got.

Mr. COWAN. The same car; yes.

Mr. STEVENS. But, as a matter of fact, it is not returned for six months, or a year, sometimes.

Mr. COWAN. But that ought not to be so.

Mr. MANN. And the car rarely goes back on the same road.

Mr. COWAN. But they can do that.

Mr. MANN. If a car goes through to New York on the New York Central, it does not mean that it will get back by the New York Central. A car that goes to Chicago over the Burlington road, say, and goes to the stock yards gets out of the hands of that road and they are unable to get it.

Mr. COWAN. You are much mistaken about that. Certainly if the railroad starts after it they have it in their possession and get it and could comply with the provisions of this bill by that means if that were necessary; but that is not the question, gentlemen of the committee. Here are simply supposable things that in actual practice never happen.

Mr. STEVENS. They do not happen, you say? They happen every day at Minnesota Transfer. The freight from one to three hundred cars, large cars, is transferred to small cars. They are having trouble and the roads are complaining about it.

Mr. COWAN. Certainly that may happen, but what I am saying is that the difficulty of the railroad to comply with this provision to deliver back a suitable car will never be great, because if it exists at all a suitable car will not be held to be exactly the same sort of car or the same car. Furthermore, if you will notice section 3, you will see that the Interstate Commerce Commission is given power to make rules and regulations with respect to the time and manner in the interchange of cars.

Mr. MANN. They have that power now.

Mr. COWAN. I do not think so. I do not know of any provision of law that gives them that right, excepting for the purpose of preventing discrimination.

Mr. MANN. If they have not that power now under the Hepburn law, then I do not know what that law means.

Mr. COWAN. Then if they have that power, certainly this bill does not hurt anything.

Mr. HUBBARD. Let me put that matter in this way: Assuming that it is the duty of a given railroad to provide equipment sufficient for

its own business; assume that it is able to do that and to do no more; assume that its own business is enough to demand the use of all its equipment. Is it the duty of such a railroad also to provide equipment so that it may make exchange with another railroad who sends loaded cars upon it?

Mr. COWAN. I should answer that in the affirmative; I should say that it is a railroad company's duty to supply not simply cars to transport freight between points on that railroad, but where it encourages—engages in—business on a through route and a through rate, it is its duty, after making that through route and a through rate, to supply the cars. And this law does not require the furnishing of cars to go off its line excepting to load to destination on a through rate and a through route.

Mr. HUBBARD. Then it is the duty of all the railroads participating in the through route to contribute and furnish enough equipment?

Mr. COWAN. Undoubtedly so.

Mr. HUBBARD. Why do you not distribute among them their proportion of that duty?

Mr. COWAN. The law does not attempt to do that. The law simply relates to the performance of the service. It leaves it to the railroads to perform the service, and perform it in the manner it sees fit, providing it is responsible for damages for not performing the service at all.

The CHAIRMAN. But that is not a fair statement. They are not only to perform a service, but they are to enable another company to perform its service.

Mr. COWAN. Ah, but they do not give the other company a whit more than they have a right to demand back. No road can be injured by having to deliver cars to another if it has the right to demand them back.

Mr. STEVENS. Under the law we have the right to compel a road to make a through rate and route whether it wants to or not, and we have the right to compel them to furnish cars to meet that traffic whether they want to or not or whether it is profitable or not. Now, do you not run up against this proposition after all: That a weak road can not do that, if your proposition is correct?

Mr. HUBBARD. Can not carry its share.

Mr. COWAN. I do not think so. I think that if that principle were invoked it means to leave the railroads entirely to decide how much service they shall perform, which the law did not intend. The law does not fix through rates for a railroad, but the railroad fixes the through rates and the through routes themselves, and the Interstate Commerce Commission is not required to fix them; but the Interstate Commerce Commission is given the authority to do it where there is no reasonable through route fixed by the railroad, and only in case the Commission deems it reasonable to do it. So I undertake to say that the Government of the United States will not make the hard and fast rule that will compel them to make a through route where the parties to it can not comply with their obligation to carry it on. You can pick up a thousand and one things that will be little objections to it, that is easy; but people want something done to define the duties of railroads and fixing the penalty for not doing them, and that is what we are here for.

Mr. HUBBARD. It is not a question of power?

Mr. COWAN. There is not any doubt about the power. It was seriously argued that it was against the Constitution to pass the interstate-commerce act, and all that, but that argument originated mostly from those who did not want the act to pass and not from those who did.

Mr. MANN. Isn't it just as much that there are many cases where this law will not work fairly, and therefore we ought not to consider those cases?

Mr. COWAN. I say there are not any cases in which this law can not be made to work fairly.

Mr. MANN. Take this case: Say a railroad has 10,000 cars of its own in use on the line of its road and in its through traffic. It has a thousand cars on its line for the use of its own customers. It receives requests from its own customers for the use of a thousand cars. If it does not furnish them, it is subject to penalty under this bill. But at the same time it receives 1,000 loaded cars from another company with a request for a transfer back of the 1,000 cars. In that case would not this road be "between the devil and the deep sea?"

Mr. COWAN. Not at all. Just try to work out how it could be worked under this bill and you will find a way.

Mr. MANN. Which way?

Mr. COWAN. I will tell you. The railroad company which received 1,000 cars, when it already had 1,000, then has 2,000 cars on its lines. If it is on a through route, the persons who are shipping that freight are just as much its customers as those who load the freight on its lines, and when it delivers its 1,000 cars to the connecting road it has a right to demand back just as many, and it would still have the same number of cars on its lines.

Mr. MANN. They go on through to the end, and the cars can not start back until they get through to the end; is that your notion?

Mr. COWAN. This does not fix the obligation to furnish them on that day and to interchange them on that day. It is to exchange them within a reasonable time, if demanded, and under rules to be provided by the Interstate Commerce Commission.

Mr. MANN. Regardless of whether they have them?

Mr. COWAN. They are bound to have them, because they do not have to give back any more than they get.

Mr. STEVENS. How are they going to help it if they are compelled to take the freight? If you tender them 100 cars of freight they are compelled to take it under the through routing?

Mr. COWAN. Undoubtedly.

Mr. STEVENS. Then they have got to give 100 cars back. Suppose they can not get them. Suppose 1,000 cars of beer start from Milwaukee over the Chicago, Milwaukee and St. Paul Railroad bound for Manila, as is frequently the case. The Great Northern or the Northern Pacific do not have beer cars, but the Chicago, Milwaukee and St. Paul Railroad do have them, because they do an immense business with them. What is the Great Northern and the Northern Pacific going to do? The cars are refrigerator cars of peculiar construction that are not adaptable for other freight. What are those connecting railroads going to do?

Mr. COWAN. They will have to deliver the cars back within a reasonable time, providing the Chicago, Milwaukee and St. Paul road demands them. If they undertake to handle the transporta-

tion of that sort of freight, why should not they be compelled to deliver back in a reasonable time as many cars as they get from some road? The "reasonable time" is the tide that fluctuates according to circumstances, and the law does not intend that they shall be compelled to do the impossible.

Mr. MANN. Your theory is that a railroad having an east and west line would have the same number of cars going east as going west?

Mr. COWAN. I would not say just the same number of cars. But, gentlemen of the committee, the railroads did do this for a long time. They are not the only people to consider. What is going to happen to these people having stock and grain and who can not ship it, if there is not a law to define what is going to be the duty of the railroad to the shipper?

Mr. MANN. I think you mistake the temper of the committee. We are trying to consider the specific propositions that you present, but when we take up the specific cases and try to analyze them, you criticize the committee.

Mr. COWAN. I am taking up time of other gentlemen and yourselves in a discussion that would consume a great deal of time and probably not reach the point. If we sit down together, which I would be glad to do with any member of the committee, and undertake to see how it can be worked out, we can do that, in my opinion, and if the provisions of this bill are not sufficient, we can make them sufficient.

Mr. RICHARDSON. As I understand from you the purpose of your bill, as you have explained it, the foundation is, that the railroads must be required to perform their duties, subject to rules, regulations, and provisions of common sense, and those that the Interstate Commerce Commission shall provide.

Mr. COWAN. That is the intention of the language.

Mr. RICHARDSON. That is the purpose of it.

Mr. COWAN. Yes; that undoubtedly is the purpose.

Mr. RICHARDSON. That is, you lay down the general principle, but do not meet all contingencies.

Mr. COWAN. It would be impossible for us to try to do that, of course. We have got to make it sufficiently flexible to do that; but I will say, on the part of the Live Stock Association, that there is no intention to put any hardship on the railroads, absolutely. We do not want anything excepting what is fairly reasonable, what you know these railroads can perform if the law requires them to do it.

The CHAIRMAN. You think the Interstate Commerce Commission has not the power to remedy this evil that you are here now to remedy. Why is it not a great deal better, if they have not the power, to give them that power, so they can make their rules that will be applicable to particular cases where the greatest grievance occurs?

Mr. COWAN. That is just exactly what the third section attempts to do; but before doing that you must remember that the Interstate Commerce Commission can not be given power to make law. You must first, in the law, define the duties; you must fix a penalty in the law, and you must require the railroad's obedience to the orders of the Commission. And then you can give the Commission the power to regulate the details, and that is drawn as broadly as we knew how to draw it in the third section.

Mr. RICHARDSON. Why give the Attorney-General the power to fix the penalty instead of fixing it in the law?

Mr. COWAN. We fix the penalty in the law, and give the power to the Attorney-General to direct suits for forfeiture.

Mr. MANN. Who drew this bill?

Mr. COWAN. I drew this bill, with Judge Clements of the Interstate Commerce Commission.

Mr. MANN. Did you consider a lot of these other bills?

Mr. COWAN. I had several bills at that time. This bill was drawn a year ago. We thought better to leave the demurrage matters to the Commission, as in the bill, as well as the speed limit, in order to meet the varying conditions of traffic.

The railroads of Texas agreed with me on this bill, we had it up before a conference committee of the house and senate, it was passed at the last session of the legislature, and it is now on the statute books of Texas, the railroads believing it was an advantage to them to do it. Hon. J. W. Terry, attorney for the Santa Fe lines, and Hon. N. A. Stedman, of the Gould lines, representing all the railroads at Austin during the session of the legislature, agreed to this and substituted it for all bills pending.

Mr. MANN. I suppose you are in a heavenly condition in Texas.

Mr. COWAN. The difference is that the laws there can only apply to local traffic. Our live-stock traffic is 90 per cent interstate. The difficulty lies in the fact that we can get the State traffic carried, and we are doing it, without trouble and without difficulty, but we could not get the interstate traffic moved without further help.

Mr. ESCH. Under section 4 do I understand that the shipper that is aggrieved can go into a State court and make this Federal statute a basis for action for damages and reparation?

Mr. COWAN. Do you mean can Congress authorize that?

Mr. ESCH. Yes.

Mr. COWAN. I think there is no doubt about that.

Mr. ESCH. It is an unusual proceeding, is it not; have we had any other instance of that?

Mr. COWAN. I don't know that I can point you to an instance at this time.

Mr. STEVENS. Under some of the bankruptcy laws, probably.

Mr. COWAN. Yes; I suppose so. I will say that the Supreme Court of the United States has held that you may have a right to sue and recover damages in a State court, although the foundation of the right is a Federal statute.

Mr. ADAMSON. I presume that right has nothing to do with jurisdiction; the right is under the natural law.

Mr. COWAN. It was not intended to give this a broader significance than to make it apply to violations of duty imposed by virtue of this act, or of the rules of the Commission made in accordance with this act.

Mr. ESCH. You use the words "Rules and regulations of the Commission herein provided for."

Mr. COWAN. It is intended by that that if the language does not cover all, it is intended to make it so. This has been carefully considered by Judge Smith and Senator Culberson, Commissioner Prouty, and some other members of the Commission. We do not intend to put any hardship upon the railroads, beyond the matter of doing those duties which are recognizable everywhere. But we do fix a

penalty, which is now unprovided for by law, but that penalty, to the benefit of the shipper, is only the attorney's fees. A man shipping a carload, and suffering a \$50 loss, can not go into court unless he can recover the attorney's fees. It is customary in fire cases, and we have it in insurance cases in Texas. It is probable that they have it in other States. It is a reasonable provision that makes the person obligated to the duty to respond to the full measure of the loss. We did not even fix the penalty to go to the shipper, but left it to the Commission and the Attorney-General to invoke the penalty where the railroad has evidently not performed its duty.

Mr. KENNEDY. With reference to the jurisdiction of the State courts. We could not take away from the State courts the right to enforce any penalty or action, no matter how it arises.

Mr. COWAN. It does not take away the right to sue on a Federal statute and recover damages that may happen and fix a penalty equal to the attorney's fees. If it simply said, "Attorney's fees to be assessed as a part of the costs," probably that could not be done, because that is a remedy that must be determined by the State law. But the language of the act is "equal" in amount.

Mr. HUBBARD. You say that two or three years ago the railroads did this, presumably because of their interest to do so. Has their interest changed?

Mr. COWAN. We think not.

Mr. HUBBARD. Has their disposition, so far as you know, changed since that time?

Mr. COWAN. It has, judging from what has happened.

Mr. HUBBARD. Do you know of any reason why, their interests remaining the same and it being their interest now to do what they used to do—do you know of any reason why they are disposed to change?

Mr. COWAN. They would do it to-day, undoubtedly, were it not for the fact that they are not able to come to any agreement about it which they can enforce; and much testimony has been taken on that.

Mr. HUBBARD. And then the trouble is not simply that the railroads have not the cars or can not get the cars, but there is, in your opinion, the additional trouble—or perhaps the only trouble—that they have been unable to agree among themselves upon a system that will work?

Mr. COWAN. Unable to agree. At all events they do not do it. We go no further; they simply do not do it.

Mr. HUBBARD. But so far as you know it is still to their interest to do it, and so far as you know they are still attempting to do it?

Mr. COWAN. Yes, sir.

Here is the report of the Interstate Commerce Commission, which practically shows that.

I wish to file statistics showing absolutely that there is less train mileage to-day per mile of line than there was in 1900. I wish to file these statements with the committee.

I will now ask the committee to hear from the other gentlemen.

Following are the statements filed by Mr. Cowan:

The Interstate Commerce Commission investigated the matter pertaining to car shortage and other insufficient transportation facilities a little over a year ago, and in doing so took evidence extensively at various western points, which is printed, and on the hearing which

the Senate committee accorded me last January on this bill I requested that the evidence taken by Commissioner Prouty at St. Louis and Kansas City be asked for and printed in the proceedings of this committee, which was accordingly done; and I shall consider that evidence as having been taken and point to some of the material matters of fact developed at the hearing.

The evidence taken by Commissioners Lane and Harlan at Minneapolis and Chicago was printed by the Interstate Commerce Commission and I refer you to the same for information.

With respect to the latter hearing, Commissioners Lane and Harlan made a report, which is to be also found in the printed copy of the hearings.

Time forbids that I should go extensively into the matters reported, but I note the following excerpts from it.

Discussing conditions respecting handling of grain in the Dakotas and Minnesota and inability of shippers to procure cars, Commissioner Lane said (p. 6):

If this condition was brought about by an actual shortage of cars, such defense was not presented by the railroad officials who appeared and testified, nor was it contended that the crop of this year exceeded expectations or was in any way abnormal.

To indicate my contention that it was not so much a question of car shortage as car performance, I note the statement of Commissioner Lane (p. 6):

Neither President Hill, of the Great Northern, nor President Elliott, of the Northern Pacific, urged shortage of cars or locomotives as an excuse for their inability to handle the grain crop, but confessed with frankness that they were using all the cars that they could handle. Thus what appeared to the farmer as a car shortage was not such to the railroad man. To him there was a shortage in adequate terminals, double tracks, side tracks, yards, and low grades.

It seems that Mr. Hill, of the Northern Pacific, at several times pointed to the insufficient facilities for handling the business and insisted on the necessity of investing some billions of dollars that was impossible to procure in order to improve the service, and in the course of his statement, as quoted by Commissioner Lane, he said:

During the time from 1895 to 1905 the business of the country—the tons moved 1 mile—increased 110 per cent, and the facilities—the increase of facilities for doing the business and handling the miles—increased 20 per cent in ten years, or 2 per cent per annum.

If by the use of "facilities" he means cars and locomotives, which the public would generally understand, as I shall elsewhere show that cars and locomotives, considering capacity, between 1900 and 1906, the period covered by my figures, increased as much as the traffic and in most cases more, except on three or four lines of railroad, which is explainable by the fact of the enormous increase in traffic on those particular lines.

Mr. Hill's statement, therefore, of the small amount of increase in facilities is not true except in so far as he means trackage. As to trackage there was no obstacle to the construction of more yards and sidings had these systems of road been disposed to spend their money that way, as the accounts of every system of road will show ample and sufficient funds to have done it.

As to the need of additional track mileage I shall show that with two or three exceptions on 19 or 20 roads leading west from Chicago and St. Louis, covering the trans-Mississippi country, the use of main-

line tracks for hauling trains was less per mile of line in 1906 than in 1900, there being an actual decrease in nearly all cases of the number of train miles per mile of line and the number of locomotive miles per mile of line.

In the course of his report Commissioner Lane shows that it was the nonuse of equipment and fully supports the contention which the proponents of this bill make that frequent use of equipment would relieve the situation. I quote as follows from his report in that particular:

Many credible witnesses who appeared at both Minneapolis and Chicago gave testimony that a great and immediate improvement in transportation service in the Northwest might be effected by a change in the methods of use of present equipment without waiting for the enormously costly and practically unattainable improvements suggested by railway officials. The Commission was told of loaded cars standing from two to twenty days at the point of origin; of empty cars lost in congested terminals or lying unused, sometimes in solid trains, for equal lengths of time; of engines broken down from overwork; of trains torn in two by heavy loads; and of train crews working extremely long hours without rest, although making only ordinary mileage. Grain receivers at Minneapolis and Duluth presented long lists of loaded cars that had been twenty or more days in moving 250 miles, and that at Duluth had again been delayed days and even weeks in switching after arrival.

All the officials and employees of the Great Northern and Northern Pacific roads giving testimony agreed in saying that engines were not loaded too heavily and that a lightening of train loads would not aid them to give better service. Yet one of these same officials also testified that any increase in train tonnage would be likely to be followed by the breaking of trains, and another added strength to the conclusion that tonnage rather than speed is the result sought by testifying that from ten to fifteen days is a reasonable time for a car of dead freight to move 350 miles passing through two division points.

Vice-President Pennington, of the "Soo" road, took direct issue with this theory of railroading, saying that in periods of congestion he found the wise plan to be to reduce train tonnage, thus making better speed, increasing engine mileage, and actually moving more tons of freight in a month without increasing the equipment. Similar testimony was given by a number of experienced railroad men at the Chicago hearing. Two theories of railroad operation were thus brought into opposition.

To many witnesses at both Minneapolis and Chicago it was obvious that if cars were made to move faster and were kept moving, their efficiency would be greatly increased. Car shortage, in other words, may result as much from lack of wise methods in handling the cars which a company possesses as from a deficiency in the number of cars or a lack of tractive power. If engines are made to haul their maximum, it is manifest that their capacity is limited to the highest grade over which they are compelled to pass. If trains are made up of so large a number of loaded cars that the engine is reduced to its minimum speed, these cars during their time of transit are withdrawn from the general car supply. From the statistics presented it would appear that the policy of hauling maximum loads on long hauls is one that produces dazzling figures of ton mileage which should greatly gratify the railroad stockholder did not the trouble some problem arise of the carrier's duty to render prompt service and make the fullest possible use of the railway and its facilities. Maximum tonnage and maximum service are not necessarily equivalents. A railroad which lives by virtue of a public grant and the exercise of quasi-public powers is primarily obligated to discharge its functions with an eye to the welfare of the public which it serves and to avoid any policy of operation which, no matter how profitable to the stockholder, may result injuriously to its dependent communities.

In support of the point that the Commission be vested with power to make rules regulating the unloading and release of equipment, the following is quoted from Commissioner Lane's report (p. 14):

If it be true that any considerable part of the shortage of car service from which the country is suffering is due to the excessive and unnecessary time allowed by railroads, it is manifestly within the power of the railroads themselves to correct such abuse. If the railroads, either through fear of losing traffic to each other or through indifference or inability, do not enact and enforce the needed rules, they will not be able to reasonably object should power to make such rules be vested elsewhere.

As a conclusion, Commissioner Lane shows that there are sufficient cars and locomotives, and I quote his statement taken from page 14 of his report:

It is the contention of men most conversant with existing equipment that there is a sufficient supply of both cars and locomotives to meet present demands were such a plan adopted as would permit a free interchange of cars between railroads and an arbitrary and common control of all equipment in its handling and distribution.

While the Commissioner doubtless had some hesitancy in suggesting the giving of power to the Commission to regulate the matter of exchanging cars, yet his belief in that particular arising from his investigation is plainly indicated by the following quotation taken from page 15 of his report:

While the railroads may fix the price that shall be charged for the use of their cars by other roads, it may become advisable for the protection of those roads which, realizing their duties as common carriers, furnish themselves with adequate equipment that power be vested in this Commission to make rules governing the interchange of cars and that Congress also enact a penal law under which railroads may be punished for confiscation of foreign equipment.

Upon the subject of reciprocal demurrage as a remedy, both Commissioners Lane and Harlan seem disposed to think that it would not operate as a complete remedy, but their expressions, examined in the light of the provisions of this bill, which proposes to authorize the Interstate Commerce Commission to establish a system of reciprocal demurrage, and until that is established that \$1 per car be named as the amount, seems not to be at variance with the ideas contained in the report of these two Commissioners. Their report seems to be directed at the point that a reciprocal demurrage law would not reach the evil, as there must be duties and obligations respecting the performance of the transportation beyond a mere inducement which would result from an establishment of a reciprocal demurrage rule.

The conclusion is thus stated by Commissioner Lane on page 18:

Manifestly it is of little value to a shipper to be given a car if that car, when loaded, is not moved promptly to destination. Therefore, the conclusion is inevitable that reciprocal demurrage alone will not insure better railroad service when the movement is over more than one system of railroad. Such a law or rule must be supplemented by some other rule or law under which the originating carrier may be insured of prompt return of the cars which it delivers to its connections.

The Commissioners quote from a decision of the Supreme Court of the United States in the Texas case involving the penalties fixed by the State for failure to furnish cars. It must be noted in that connection that the expressions used by the Supreme Court in the case (*H. & T. C. Railroad Company v. Mayes*, 200 U. S., 321) had reference only to the limitations upon the police power of the State to fix penalties for not furnishing cars for interstate business, and it was only upon the ground that the State law gave no latitude for unavoidable causes which could not be provided against by the use of reasonable foresight and diligence that the majority of the court held the law to be unconstitutional as applied to interstate commerce, on the ground that the law was unreasonable. It must be understood that testing the power of a State to regulate interstate commerce under its police power, the standard of reasonableness of such a law is always applied. That standard is not applied, of course, to the power of Congress to enact law to regulate interstate commerce. Only the constitutional limitation against taking property or doing that which amounts to taking property without just compensation applies to the power of

Congress as a limitation. I submit that, without question, the limitations named in the decision mentioned are plainly not applicable to an act of Congress. Neither do I understand the Commissioners to suggest that it is.

As indicating that there was a woeful lack of proper management, Commissioner Harlan said, at page 21:

It is reasonably clear that there can be immediate improvement in the switching of cars in and out of terminals. The delay of many days in setting a car at the unloading point and in getting the loaded car out of the switching district and on its way to destination is often not only unexplained, but apparently inexcusable.

Reform in most of these matters lies wholly in the hands of the railroad companies and the shippers themselves. Possibly if more extensive powers were lodged in the Commission in dealing with terminal conditions it might result advantageously.

And again, as indicating still further the importance of regulating the matter of interchanging cars, Commissioner Harlan said, at page 22:

Some railroad men of prominence appearing before us seemed to think that the more effective regulation of the interchange of cars by carriers would of itself go far toward remedying the present car shortage. There seem to be strong reasons for thinking that the proposed car pool or car clearing house would result in a more effective car service. If some such adjustment can not be reached by the companies themselves, it may be that legislation will become desirable and necessary.

All efforts, if any considerable efforts have been made, in the direction of the proposed car pool to serve some purpose have failed, and hence the importance of legislation of the character embraced in this bill may be fairly considered as recommended by both Commissioners Lane and Harlan as a result of their investigations.

If operating expenses have increased, if stocks and bonds declined, why blame the public? It furnishes the traffic; any decline is merely temporary.

The railroads have so many smart men hired and so many are on waiting list that they are not lacking apologists, defenders, advocates galore, everywhere all the time. That is why they come forward with poverty plea.

If law has interfered with railroad officials, commonly called "mag-nates," continuing their money making by the millions, by issuing, selling, exchanging, and otherwise manipulating bonds and stocks, it does not follow that the railroad corporation, as such, has suffered. The bitter utterances of financial heads, so called, in our railroads are in their personal and not in their representative capacity.

Who has hurt the railroad corporations, rendered them unable to pay dividends in some cases, unable to perform a good service, and brought conditions of financial disaster, possibly, on some of them? Was it the people who furnish the business and "pay the freight?" Was it the luckless and innocent stockholder whom everybody seems so anxious to protect? Not by any means. It was by the "financial heads" increasing the indebtedness of the roads and directly and indirectly pocketing the money. Not in interest of the corporation as such, but of themselves as individuals and those whose interest is similar. Do you suppose they care anything for that entity created by law called the corporation, when disassociated from their vehicles of "getting there?"

Now we want to help the railroad as a corporation, but we owe no allegiance to the railroad king who acts toward the public as if he were "king," indeed. We will help the corporation. We can't help the other fellow in his devious ways.

42 CULBERSON-SMITH CAR AND TRANSPORTATION SERVICE BILL.

The tabulated statement referred to by Mr. Cowan in his remarks is as follows:

[Taken from official annual reports filed with Commission.]

Road.	Miles.	Per cent yards and sidings.	1,000-ton miles per mile of line.	Tons per train mile.	Freight cars per mile of line.	Train miles per mile of line.	Miles per car per day.	Number of locomotives.	Mileage freight locomotives per mile of road.	Number stock cars owned.	Live stock tonnage.	Total freight cars.
A., T. and S. F.:												
1900.....	4,806	21	506	215	4	2,065	.....	791	2,896	2,520	872,637	24,269
1906.....	5,043	26	723	290	8	2,146	.....	1,458	2,685	3,678	723,671	30,840
G., C. and S. F.:												
1900.....	1,127	18	405	201	1.5	1,948	75	162	2,540	46	143,108	1,741
1906.....	1,423	26	566	265	1.5	2,030	100	175	2,364	14	126,797	2,283
C., R. I. and P.:												
1900.....	2,455	18	455	181	4.6	2,359	30	572	2,564	2,493	725,443	16,812
1906.....	4,938	20	521	245	5.2	2,013	27	1,233	2,261	3,607	901,902	35,349
Mo. P. Rwy.:												
1900.....	3,164	18	371	189	5	1,735	20	320	2,049	727	523,034	16,023
1906.....	3,491	22	531	246	6.9	2,007	17	489	2,167	3	664,065	24,222
Tex. and Pac.:												
1900.....	1,420	20	497	175	3.4	2,327	38	225	2,371	164	113,428	5,261
1906.....	1,756	25	492	217	4.8	2,270	27	334	2,314	458	130,983	8,729
Frisco:												
1900.....	1,401	19	372	154	3.9	2,357	31	205	2,404	716	128,305	5,591
1906.....	4,738	24	471	219	5	2,041	22	785	2,210	684	365,972	24,134
B. P. Co.:												
1900.....	5,624	25	618	296	3.9	1,938	34	853	2,447	905	329,958	22,285
1906.....	5,406	33	687	334	4.6	1,922	34	1,167	2,620	1,966	344,853	25,409
G. H. Y. S. Ry.:												
1900.....	918	17	997	287	3.6	3,430	53	150	4,239	206	67,389	3,384
1906.....	1,316	21	841	393	3.5	2,049	47	277	2,255	288	108,346	4,466
M., K. and T.:												
1900.....	2,222	18	530	197	4.3	2,692	37	264	2,770	506	385,422	9,669
1906.....	3,042	21	460	217	5.5	2,072	24	470	2,368	1,356	310,144	16,824
C., B. and Q.:												
1900.....	6,412	20	477	195	5.9	2,325	34	951	2,827	5,291	(a)	37,236
1906.....	8,677	24	732	370	5.4	1,829	32	1,435	2,081	6,631	(a)	46,527
C. and N.W.:												
1900.....	5,571	30	734	254	7.7	2,670	24	1,090	3,656	3,381	916,865	40,893
1906.....	7,553	32	694	285	7.3	2,278	22	1,342	2,987	5,075	1,319,855	54,911
N. Pac.:												
1900.....	5,036	18	467	317	4.5	1,284	28	594	1,807	837	150,915	21,416
1906.....	5,793	24	971	400	6.6	2,268	31	1,005	2,949	2,027	283,789	36,099
Grt. Northern:												
1900.....	4,076	15	421	321	3.6	1,145	28	463	1,941	477	122,579	14,770
1906.....	5,183	22	870	544	5.9	1,521	28	734	2,004	1,208	219,630	30,477
C. M. and St. P.:												
1900.....	6,461	23	525	205	5.6	2,367	29	837	3,016	2,903	836,786	36,046
1906.....	7,267	27	649	271	5.4	2,214	31	1,016	3,124	2,830	1,092,569	39,429
Colorado So.:												
1900.....	1,141	19	226	152	3.7	1,389	17	148	2,024	367	67,950	4,259
1906.....	1,134	22	501	269	5.9	1,664	17	172	2,402	555	97,058	6,758
Ft. W. and D. C.:												
1900.....	453	11	226	138	2.2	1,631	37	32	2,086	177	86,549	1,004
1906.....	454	16	555	280	2.6	1,996	51	48	2,362	248	83,207	1,192
D. and R. G.:												
1900.....	1,656	20	344	145	5	2,159	23	311	3,474	694	81,896	8,359
1906.....	2,532	21	435	213	5.4	1,799	18	484	2,555	1,501	122,164	13,412
I. and G. N.:												
1900.....	825	14	320	165	2.8	1,820	39	82	1,889	25	45,029	2,363
1906.....	1,159	19	397	271	3.2	1,724	36	135	1,807	98	71,603	3,714
St. L., I. M. and S.:												
1900.....	1,773	22	786	250	5	3,028	39	239	3,272	786	109,097	8,935
1906.....	2,459	33	932	374	6.9	2,389	27	456	2,505	810	81,703	16,770

a About 100,000 cars.

CULBERSON-SMITH CAR AND TRANSPORTATION SERVICE BILL. 43

[Basis of statistics from Statistical Department of Interstate Commerce Commission.]

Tons 1 mile.

	1900.	1906.		1900.	1906.
Gould Lines ^a	4,722,598,217	7,210,272,098	U. P. System.....	2,650,996,131	5,353,374,071
Santa Fe Ry. System.....	3,747,116,069	5,877,702,994	C. and N. W. Ry.....	3,855,159,649	5,156,074,115
Rock Island, Frisco System.....	3,151,190,018	5,512,366,946	C. B. and Q. Ry.....	3,012,412,729	6,303,883,569
M. K. and T. Ry. System.....	1,176,879,464	1,400,873,438	C. and S. Ry.....	361,673,581	822,871,531
St. Paul.....	3,357,456,584	4,663,808,007	N. P. Ry.....	2,205,317,271	5,245,260,080
S. P. Ry. System.....	3,459,211,175	3,741,887,878	Gt. N. Ry.....	1,722,683,402	4,484,575,584
				33,422,694,290	55,772,650,317

Increase 66 per cent.

^a Mo. Pac. Ry., Texas and Pacific Ry., St. L., I. M. and S. Ry., St. L. and S. W. Ry., I. and G. N. R. R., D. and R. G. Ry.

	1907. ^b		1907. ^b
C. and S.....	907,479,591	C. and N. W.....	5,428,771,597
G. N.....	4,920,792,956	C. M. and St. P.....	5,155,662,231
N. P.....	5,504,444,098	S. P.....	4,205,230,298
C. B. and Q.....	7,114,843,286	U. P. System.....	5,704,061,535
M. K. and T.....	1,709,784,842		

^b Figures for 1907 not complete. Principal data made up by Interstate Commerce Commission statistician before Reports for 1907 were filed.

Cars.

	Stock cars.		Freight cars.		
	1900.	1906.	1900.	1906.	1907.
Gould lines.....	3,169	4,321	46,428	76,951	.....
Santa Fe.....	3,286	4,181	28,338	43,369	.....
Rock Island, Frisco.....	3,722	3,399	33,068	80,052	.....
M. K. and T.....	506	1,356	9,669	16,824	18,802
St. Paul.....	2,903	2,830	36,046	39,429	41,101
S. P.....	905	1,966	22,285	23,409	25,474
C. and N. W.....	3,381	5,075	40,893	54,911	57,413
C. B. and Q.....	5,291	6,663	37,236	46,527	46,840
U. P. System.....	3,074	4,186	22,157	23,639	.....
N. P.....	837	2,027	21,416	36,099	42,320
G. N.....	477	1,208	14,770	30,477	35,893
S. P., Texas.....	424	1,030	11,104	13,734	.....
Total.....	28,519	^a 41,245	328,613	^b 496,369	.....

^a Increase 45 per cent.

^b Increase 54 per cent.

Live stock tonnage.

	1900.	1906.		1900.	1906.
Gould lines.....	953,515	1,102,171	C. B. and Q.....	1,000,000	1,250,000
Santa Fe.....	1,263,961	1,203,550	C. and S.....	154,499	180,265
Rock Island, Frisco.....	1,060,919	1,256,494	N. P.....	150,915	283,799
M. K. and T.....	310,144	385,422	G. N.....	122,579	219,630
St. Paul.....	836,786	1,092,569	S. P., Texas.....	170,573	235,915
S. P.....	329,958	344,853			
C. and N. W.....	916,865	1,319,858		7,270,714	8,874,526

Increase 23 per cent.

44 CULBERSON-SMITH CAR AND TRANSPORTATION SERVICE BILL.

Track mileage.

	1900.	1906.		1900.	1906.
Gould lines.....	10,629	12,941	St. Paul.....	6,462	7,268
Santa Fe.....	7,767	8,826	C. and N. W.....	5,571	7,453
Rock Island-Frisco.....	6,952	10,044	U. P. System.....	5,427	5,408
So. Pac. Co.....	5,624	5,406	C. and S.....	1,141	1,134
	918	1,316	N. P.....	454	454
S. P. in Texas.....	508	665	G. N.....	5,037	5,793
	191	191		4,076	5,193
	324	356	Total.....	63,629	75,971
	326	446			
M., K. and T.....	2,222	3,042			

o Increase about 20 per cent.

Statement showing equivalent of increase in actual loading, expressed in number of cars, 1906 over 1900.

	Capacity— per cent of increase.	Total cars in 1906.	Capacity— equivalent increase in cars.	Equivalent compared, 1906 to 1900.	Per cent of increase of aggregate capacity and number.
Mo. Pac.....	30	24,222	7,266	31,488	152
Iron Mountain.....	30	16,770	5,081	21,801	132
Texas and Pacific.....	18	8,789	1,582	10,371	97
I. and G. N.....	20	3,714	742	4,456	90
St. L. and S. W.....	20	9,940	1,989	11,929	130
D. and R. G.....	58	13,412	7,779	21,191	91
Total.....		76,847	24,389	101,236	111
Santa Fe.....	13	42,369	5,508	47,877	70
Rock Island, Frisco.....	20	80,052	16,010	96,062	191
M., K. and T.....	9	16,824	1,514	18,338	81
C., M. and St. P.....	17	39,429	6,703	46,132	28
S. P.....	5	25,409	1,270	26,679	15
C. and N. W.....	16	54,911	3,294	58,205	42
C., B. and Q.....	36	46,527	16,750	63,267	70
C. and S.....	50	7,950	3,975	11,925	126
N. P.....	30	36,099	10,829	46,928	120
G. N.....	36	30,477	10,972	41,449	87
S. P. in Texas (estimate).....	20	15,734	3,147	18,871	70

Average of the 18 lines approximately 94 per cent.

Number of locomotives.

	1900.	1906.	1907		1900.	1906.	1907.
Gould Lines.....	1,387	2,681		C., B. and Q.....	951	1,475	1,575
Santa Fe.....	1,085	1,651	1,769	C. and S.....	180	220	278
Rock Island-Frisco.....	983	2,314		N. P.....	594	1,005	1,255
M., K. and T.....	264	430	505	G. N.....	463	734	889
St. Paul.....	837	1,016	1,017	S. P., Texas.....	370	528	
U. P. System.....	775	1,051		Total.....	9,802	15,614	
S. P.....	853	1,167	1,172				
C. and N. W.....	1,060	1,342	1,422				

Increase 60 per cent.

We have to present to you, should you desire them filed, which perhaps is unnecessarily encumbering the record, letters of recent date to show the interests which demand the enactment of these principles which we advocate, as follows:

The Southern Cypress Manufacturers' Association of New Orleans, La., George E. Watson, secretary.

The Commercial Club of Topeka, Kans., T. J. Anderson, secretary.

The Southern Wholesale Grocers' Association, Birmingham, Ala.

The Salina Commercial Club, Salina, Kans., W. F. Grosser, secretary.

The St. Paul Board of Trade, W. H. Patten, secretary.

The Receivers and Shippers' Association, Dayton, Ohio, W. B. Moore, secretary.

The Citrus Protective League, Los Angeles, Cal., A. G. Kendall, secretary.

The Coal Dealers' Association of Iowa and Nebraska.

The Trans-Mississippi Commercial Congress indorsed this proposition by resolutions duly passed at its annual convention held at Muskogee, Okla., in November last.

We have a number of letters from important shippers in various parts of the country to the same effect.

STATEMENT OF MR. MURDO MACKENZIE, OF TRINIDAD, COLO.

Mr. MACKENZIE. I wish to file with the committee the resolution passed by the American National Livestock Association at its meeting in Denver on the 21st and 22d of January, 1908.

Following is the resolution referred to:

AMERICAN NATIONAL LIVE STOCK ASSOCIATION.

[Adopted at Denver, Colo., January 21 and 22, 1908.]

Resolution No. 1.—Relative to furnishing cars to transport live stock and other perishable freight and to give prompt and efficient service.

Whereas many of the railroads have failed to supply themselves with sufficient facilities to perform their duties as common carriers in receiving and transporting freight throughout the western half of the United States, where live-stock raising and feeding and shipping is a most extensive and important industry; and have failed to furnish cars in which live stock could be shipped to market to such an extent that tens of thousands of cattle and sheep could not, during the past season, be marketed; and have failed to supply cars for such great length of time after orders have been given therefor, that a large proportion of the live stock marketed were so much delayed, generally for weeks, and in many instances for months, that they lost seriously in flesh and condition; and after cars were supplied and live stock loaded have moved the same at such slow rate of speed and otherwise delayed shipments as to seriously damage such live stock; and

Whereas this treatment of the live-stock industry of the country has been growing worse year by year and has cost the producers millions of dollars, reaching the appalling condition during the past season of forcing many shippers practically out of business, probably bankrupting some and seriously injuring and demoralizing the entire live-stock business, particularly in the Southwest; and

Whereas there are as a whole more stock cars and have been fewer shipments the past season than heretofore, and it is our belief, from observation, experience, and from what we can ascertain, that there has been a reckless indifference of the railroad management in the localities where this disastrous condition has existed in supplying themselves with stock cars or in utilizing what they have been able to obtain, to transport live stock, either permitting the cars to stand idle, as has often been the case, or using them in transporting other traffic at a time when live stock was being held for shipment and fast depreciating in value, thereby producing a wanton destruction of property; and

Whereas there exists no adequate means of compelling the railroads to perform their duty to furnish cars and perform the transportation service in reasonable time, if at all, and no means of securing adequate redress for failure of the railroads to perform those duties, where they fail to do so; and

Whereas there is no way by which one railroad can compel its connections to exchange empty cars for loaded cars of live stock, or to receive and forward live stock in the cars in which they are loaded; and

Whereas the refusal of railroads to permit cars to go off their own line and to deliver cars to other lines has to a great extent impaired the efficiency of the cars which should

be available, and placed it beyond the power of many railroads to secure cars or a return of cars or exchange of cars, and in this way demoralized the railroad service; and

Whereas it is our earnest belief, concurred in by all those who investigate the subject, that the free exchange of cars and the through and rapid transportation of live stock is the only way in which this unbearable condition can be relieved; and

Whereas we believe that if left to themselves the railroads will not better conditions, at least not relieve them, in absence of some law which compels a free exchange and interchange of cars to enable each road to get back empty cars for loaded cars delivered to its connections, and a law which fixes penalties to compel the furnishing of cars to shippers and the exchange and interchange as between railroads; and

Whereas there has been introduced in the Senate of the United States by the Hon. C. A. Culberson, United States Senator from Texas, a bill numbered S. 3044, declaring it to be the duty of railroads, subject to the act to regulate commerce, to provide sufficient facilities to perform with dispatch their duties as common carriers in furnishing cars and transporting all freight, including live stock, and to promptly transport same, and to exchange loaded and empty cars, and otherwise to provide sufficient facilities, fixing penalties for failure of such duties, and giving to the shipper the right to recover in any court of any State or Territory having jurisdiction his damages and attorney's fees, and in case of failure to furnish cars for shipping live stock, double the damages sustained; and also empowering the Interstate Commerce Commission to enforce penalties for violation of the act and to make rules and regulations with respect to the time and manner of giving notice for cars, furnishing cars, exchange and interchange of cars, and all needful rules and regulations in the administration of such law and to compel its observance, and providing rules applicable to the different classes and kind of freight and the varying circumstances and conditions of shipment; and

Whereas we believe that the enactment of said bill into law will speedily remedy the deplorable conditions herein set forth, and that some such measure is imperatively necessary: Now, therefore, be it

Resolved, By the American National Live Stock Association, in convention assembled in Denver, Colo., January 21, and 22, 1908, that we heartily indorse said bill and recommend to our Senators and Congressmen from all of the Western States from which this association draws its membership that the same be passed; and be it further

Resolved, That copies of this resolution be promptly printed and sent to each of the western Senators and Congressmen, with the request that the same be read in both the Senate and the House of Representatives as the expression of this convention; and be it further

Resolved, That a copy thereof be sent to President Roosevelt as the expression of this convention, with the request he submit to Congress a special message urging an enactment of such a law; and be it further

Resolved, That said bill be printed by the secretary of this association and furnished the members thereof, with the request that they write their respective Senators and Members of Congress, urging the enactment thereof.

A true copy.

T. W. TOMLINSON, *Secretary*.

I represent the American National Livestock Association as its first vice-president, and I wish to send this resolution to each member of the committee, but in case they may not have looked them over very carefully I will file this resolution.

There are one or two points that I would like to refer to, and one is the shortage of cars, more particularly. I will give you a specific case, so that I will be able to give the details, and when I tell my own case it will refer to hundreds of cases besides my own.

I ordered cars this year on the 15th of September for the purpose of shipping cattle to Kansas City and St. Louis, Mo., on the 5th or the 6th of October. I had the cattle gathered with the intention of shipping them to those points, and when they were ready for shipment I was told by the railroads that they could not get the cars, and that I might not look for cars before at least the middle of December. So I either had to hold my cattle or turn them loose again, and I thought it was best to turn them loose, which I did. In the meantime I went to several connecting roads to see if I could

get cars from them. I went to the Rock Island and begged them on personal and business grounds to help me out. They refused positively to give me the cars. So did the Santa Fe. They all did this on the ground that they had more to do on their own systems than they had cars for, and that they could not supply cars to connecting roads, my business originating on the Fort Worth and Denver City, because it was stated that they could never get their cars back again. They cited a case where they had 200 new cars brought west over the Rock Island. The Rock Island asked them as a favor to allow them to load their cars east so that the cars would not be taken west empty. They stated to me positively that they never saw one of those cars, that the cars never reached them.

Now, gentlemen, if Mr. Cowan's contention was carried out, the Rock Island could not keep those cars, but would have to send them back. That is the point we are after, that these roads when they get possession of those cars shall not keep them indefinitely for their own private uses. If we had such a law passed this thing could not happen, the existing conditions could not continue, and the shippers would have some hope of getting their cattle shipped to market some time.

Now, gentlemen, I had to turn back one-half of the cattle I had gathered, and never got them shipped at all. This year I turned loose over one-half, and had to turn them loose two months and keep them in an inferior pasture. I then had to regather them at a loss to me of from 75 to 100 pounds in weight. I can assure you, gentlemen, that if the railroads would give me \$30,000 in money that that sum would not make up to me or to my company the amount of money that I lost on account of their failure to supply cars within a reasonable time.

Now, I am not going to take up your time, but I could give you hundreds of cases where those facts apply to other people. I could go at length into the poor service, if I had the time, but I will refer to the Agriculture Department where, at our instigation, they have investigated 800 cases of poor service, and in those investigations they have found that in all the cases they investigated the rate per mile made by those roads was under 10 miles per hour, and in some cases it was 2 miles per hour for a distance of from 200 to 250 miles.

Now, gentlemen, you have no idea what loss this service entails on cattlemen, but I will refer you to the Agricultural Department, and to Mr. McCabe, the solicitor, who made the investigations.

Mr. RICHARDSON. You are complaining chiefly because the cars that were supplied to one line or to one road were shipped off on another, and they were not returned to the road, and the other road is using them?

Mr. MACKENZIE. That is what they claim.

Mr. RICHARDSON. Is it not to the interest of that road that owns those cars to get them back?

Mr. MACKENZIE. They can not get them back.

Mr. KENNEDY. That is the excuse the road makes to you as to why they will not give you cars?

Mr. MACKENZIE. That is the excuse they make.

Mr. RICHARDSON. Then the point is that the other road is using the cars in a different way from what it was originally intended to

use them for their own purposes, and denying the road that owns them the privilege of using them.

Mr. MACKENZIE. Yes. I can tell you another fact——

Mr. RICHARDSON. I do not see why the railroad does not regulate that itself. It is certainly to its interest to do it.

Mr. MACKENZIE. At the very time I was appealing to these men the same system was using hundreds of cars hauling coal, and not using them in the stock business at all.

STATEMENT OF MR. I. T. PRYOR, PRESIDENT OF THE CATTLE RAISERS' ASSOCIATION OF TEXAS.

Mr. PRYOR. I am president of the Cattle Raisers' Association of Texas. I was in hopes that we would have plenty of time to let you gentlemen understand the drastic conditions we are in as to the car service and the securing of cars.

Now, if that gentleman over there [pointing] wanted to buy a drove of cattle from me, I would not dare sign a contract with him agreeing to deliver that drove of cattle on the cars at any certain time, and he would not buy them of me because he would want them at a certain time. Conditions have come to that. If I go to a Chicago banker and borrow money on my cattle that are in Kansas in pasture, and ready to go to market, and set the time as the 1st day of September to ship those cattle and to pay that note, it will have to go to protest, for I can not get cars until October, November, or December. The cattle will have lost their fat, and nobody has gotten the benefit of it. This thing is growing worse day after day, week after week, and year after year, and it simply is because they do not exchange cars with each other. They are appropriating stock cars for coal. We can not ship our cattle in anything but the stock car, and they are discriminating against our class of freight in favor of the other classes. You can haul wood or coal in any kind of a car, but you can only ship cattle in cattle cars.

The CHAIRMAN. Do these difficulties exist now or were these the difficulties of last year?

Mr. PRYOR. I have in my possession a large number of letters, the occurrences of 1907, where a man had a railroad running through his ranch, and had 10,000 cattle that he wanted to ship. These cattle were fed in April, May, and June, the best market for young cattle during the year. Later the cattle will fall off and get thin. He got 3 cars in April, 3 cars in May, and 37 cars in June—then came July and August—and the market went off and he didn't get through shipping until December.

The CHAIRMAN. A gentleman was here before the committee the other day who stated that one-third of the freight cars in the United States was idle to-day.

Mr. PRYOR. They may be idle, but why that is I do not know. But I do know that the information I have is that there were 30,000 cattle, 3,000 cars, turned back on the Pecos Valley road alone in the Panhandle of Texas and in New Mexico that could not get transportation, and they had to take them back to the ranges and turn them loose.

The CHAIRMAN. Another gentleman made the statement that on 46 per cent of the mileage of the United States there were now over 3,000 cars standing upon side tracks.

Mr. PRYOR. That may be true; I don't know. That probably would be caused by plenty of cars but lack of service.

Mr. STEVENS. Right there, do you not think that that is caused by congestion at terminals, or lack of proper track facilities in places?

Mr. PRYOR. No, my idea is this: They load down the trains too heavy. They load the cars on the side track and then put them into large trains. From 1898 to 1900 an engine and a crew with 15 cars would go 16 to 18 miles an hour. They will hold these cars up on the side tracks waiting to load the engine to its full capacity.

Mr. STEVENS. Why do they do that?

Mr. PRYOR. Because the superintendents of all of these railroads in the West are jacked up by some man in New York, and the superintendent that carries the most trains over his road with the least motive power, the least number of engines and crews, is marked up.

Mr. STEVENS. That is to decrease the ton mileage cost?

Mr. PRYOR. Yes.

Mr. STEVENS. Do they not have to decrease the ton mileage cost in order to meet the freight reduction in rates?

Mr. PRYOR. They don't do it. It occurs to me that the tonnage system and the lack of exchange of cars is the cause of this trouble; that is my opinion.

I want to file these documents here, which is a condensed reply to the chairman, by a number of letters from shippers giving the conditions. There are also two letters in full from two shippers, which came in this morning, that I would like to file.

The CHAIRMAN. You may give them to the stenographer.

Mr. PRYOR. I thank you.

Following are the letters and statements referred to:

PALODURO, TEX., February 8, 1906.

DEAR SIR: I wish to give you an experience that I had in shipping 2,000 steers over the Chicago, Rock Island and Pacific Railway last summer, from Groom, Tex., to Arkalon, Kans.

On July 1 I ordered 70 cars through the agent at Groom to load there on July 25, for Arkalon, Kans. I was assured by the assistant general freight agent of the Chicago, Rock Island and Pacific Railway at Kansas City that if I would promise to have the cattle at Groom on July 25 there would be no delay about the cars. On July 20 I again notified the agent at Groom that we would have the cattle on hand ready to ship on the 25th, and he wrote me as follows: "Am advised that we will get the cars."

We were there with the cattle on the 25th, but there were no cars there and we could get no definite information as to when they were likely to be there. We had to rent a pasture to hold our cattle and it was twelve days before we got them shipped, and the pasturage cost us \$400, besides having our outfit of men and horses laying over when they ought to have been at home doing important work on the ranch.

On August 2 the agent at Groom notified us that we would get a train out on the 3d. We brought our cattle in and yarded them, and then were notified that we could not get the train that day. On August 4 we were notified that there would be 23 cars there ready to commence loading by noon. They finished loading these 23 cars at 6.45 p. m., and they stood on the track until 9.30 p. m., and arrived at Amarillo at 7.30 a. m., this being a distance of about 40 miles, which it took them about thirteen hours to make. They were held at Amarillo for two hours, leaving there at 9.30 a. m., and arrived at Dalhart at 5 p. m. They were held there two hours and thirty minutes, and then we were told that they must be unloaded. Dalhart is about 115 miles from Groom, where the cattle were loaded, and it took twenty-two hours to make the 115 miles. They were reloaded at 7 a. m. on the 6th and left at 9.30 a. m., arriving at Arkalon at 5 p. m. It took forty-six hours to move these cattle from Groom to Arkalon, a distance of 239

miles, and we had a \$40 feed bill to pay at Dalhart, which was quite unnecessary if the cattle had been handled properly by the railroad. We were notified that our second train would be ready to load at 10 a. m. on August 7. The train did not arrive at Groom until 12 noon. Then they discovered the engine was out of water and they had to run about 20 miles to water. They came back and discovered the engine was leaking and had to make another run for water. They started to load us at 7.30 p. m. and finished loading at 4 o'clock next morning, leaving Groom at 4.30 a. m. on the 8th and arriving at Arkalon at 2 a. m. on the 9th. This was twenty-six hours and thirty minutes as compared to the other train's time of forty-six hours.

This is only one instance of the bad treatment I received at the hands of the railroads in the past year. On October 18 I loaded a car of bulls at Southard, Tex., on the Fort Worth and Denver Railway for Kansas City. They advised me that they could get them through all right if I would bill them via Fort Worth, and then over the Missouri, Kansas and Texas from Fort Worth to Kansas City. They were billed through to Kansas City on this routing, but when they got to Fort Worth the Missouri, Kansas and Texas refused to furnish a car for them, and the Fort Worth and Denver Railway refused to let their car, which they were originally loaded in, go off their own road. The result was my bulls laid in Fort Worth for four days and were finally sold in Kansas City on the 28th, ten days from the time they were first loaded. In the good old days when we used to get service from the railroads they would have reached Kansas City in thirty-six hours. Some of my other experiences last fall are too sad to relate, driving cows to the railroad when they were worth \$3 per 100 pounds and holding them there for thirty days or more on short grass, waiting for cars, and finally getting them to market in such bad condition that they sold for \$2 per 100 pounds.

Hoping the present Congress will pass Senator Culberson's bill and Congressman Smith's bill, providing better service for shippers of live stock,

I remain, yours, truly,

RICHARD WALSH.

Col. I. T. PRYOR,
New Willard Hotel, Washington, D. C.

DENVER, February 11, 1908.

DEAR SIR: At the request of Mr. Ike Pryor, president of the Cattle Raisers' Association of Texas, I beg to forward, in your care, this letter to be presented to such body or committee as properly has the matter in consideration.

As president of the Continental Land and Cattle Company, we most respectfully represent that all railroad service has been exceedingly bad for the past three years and is growing daily worse.

It has been impossible to get cars at all promptly or certainly on any of the lines with which we have done business in the past three years. We speak particularly of the branch of the Rock Island that runs from Amarillo, Tex., to Little Rock, Ark. We believe this is called the Gulf road. At any rate, our shipping point on this road is Shamrock, in Wheeler County, Tex. In connection with this road we wish to state that the shipping pens are on our Rocking Chair ranch in Texas; that the latter part of 1907 this road positively refused to furnish cars to carry cattle, stating to our foreman, Mr. Green, that they did not care for the business.

Now, on the 25th of September, 1907, our foreman, Mr. R. D. Green, was waiting at Shamrock with 20 cars of cattle, ready to ship to market. The Rock Island road, without excuse, although notified in ample time, refused to furnish cars for these cattle and we were consequently compelled, after holding them as long as we could, to drive them from this road over 70 miles to the Fort Worth and Denver road at Estelline.

Our efforts to get these cattle to market is best told in the statements of R. D. Green, our foreman. He wrote me on September 29, 1907, as follows:

"I am just in from Shamrock. Will say that I could not get any cars, nor the promise of any, so I have started everything to this ranch, Estelline, Tex. Will have some 35 cars to ship next Saturday from Estelline, if I can get the cars. If I can not get cars, I will be compelled to turn them loose on the ranch. Please work on the Santa Fe, if you can, and try to get them to send us cars. I ordered 20 cars over the Santa Fe at least two weeks ago, to load the 5th of October. I also ordered some more to-day. I also ordered 25 cars over the Missouri, Kansas and Texas on October 5, 1907, but there are no cars yet. Now, I will state in this connection, that the Fort Worth and Denver always say that they have no cars, but that if we will get Santa Fe or Missouri, Kansas and Texas cars they will load the cattle and ship them over this route."

On October 6, 1907, almost a week later, our foreman wrote:

"I have your letter at hand. I have been digging after cars, but have not got a car yet. I will be compelled to put the cattle, some of them at least, back on the ranch."

On October 11 he writes:

"Am to get 7 cars in the morning, so I will get off a few cattle."

Now the rest of these cattle we were unable to get to market, so, after holding them for months, we were compelled to turn them loose again on the range.

In addition to this we wish to state that in the fall, I think it was in October, we sold 2 cars of calves to a Mr. Cobb, a banker at Odessa, Mo. I advised my foreman of the sale and he ordered cars over the Rock Island at Shamrock in ample time to secure them, telling them the date he would arrange to ship. It was Mr. Cobb's desire that these calves be located at Shamrock, as it was a shorter run to his point in Missouri.

I will state in this connection that the calves were weaned from their mothers and driven all the way to Shamrock, a distance of more than 35 miles, and after being held there for days we were compelled to drive them back, turn them loose on the ranch, and feed them there, and we lost the sale to Mr. Cobb, greatly to his disappointment and our own. Mr. Cobb had gone to the trouble and expense of sending his own foreman down there, and he selected the calves at the ranch and had gone with them to Shamrock and waited there with my foreman until he was obliged to go home. He then instructed my foreman to wait awhile longer and to keep the calves from shrinking the best he could, hoping that the shipment would be made later. My foreman waited a few days longer and then wired me to know what he should do, as he saw no prospect of cars. I wired him to come back to the ranch and turn the cattle loose.

Now, I speak of these cases coming within my own knowledge, and I wish to say that the Rock Island road in particular—that is, the branch that runs from Amarillo eastward to Little Rock, Ark.—absolutely refuses to furnish cars, stating, as I understand, that they do not care for the business.

I have no personal knowledge of the service from Montana and Dakota—that is, I have to relate no incidents coming within my own knowledge. All I know is that our cattle that went over these routes came in in bad condition, and I am informed by the shippers they have often waited an unreasonable time at the railroad for cars.

I submit this statement for what it may be worth.

Very truly, yours,

CONTINENTAL LAND AND CATTLE COMPANY,
By WM. E. HUGHES, President.

Hon. S. H. COWAN,
Attorney Texas Cattle Raisers' Association,
New Willard Hotel, Washington, D. C.

Testimony by I. T. Pryor, president of the Cattle Raisers' Association of Texas, before the House Committee on Interstate and Foreign Commerce in support of the Culberson-Smith car and transportation service bill.

In representation of the Cattle Raisers' Association of Texas, which represents the cattle raisers of the Southwestern States and not merely of Texas, I wish to urge upon this committee the pressing necessity of enacting a law which will enable us to secure the best service the railroads can give us in supplying cars to ship cattle, and when they accept them get them to market and other destinations speedily.

It may not be necessary, but I wish to impress you with the fact that our urgent demand in this particular, which is perhaps somewhat more urgent than we would make were we shippers of dead freight, whereas from the fact that when cattle are ready to market, or when we want to ship them to a place where feeders buy them to fatten, delay in getting cars and not getting through to destination entails a very serious loss in money value, besides inhuman treatment to the cattle which our business can not afford.

It is not merely the interest of the men in the Southwestern States who raise cattle which is affected by failure to get cars and poor service, but the interest of the men in the corn belt States who buy our cattle to mature and fatten is just as much affected as the men who raise them.

You may not know it, but it is a fact that a large part of the cattle for the corn belt States is bred in the South and Southwest, where they can better raise but can not so well fatten and mature them.

We ship cattle to the various markets where feeders buy them to fatten, and to various points where public sales are held. The failure to furnish cars and to get them through injures the cattle, injures their salable value, and causes loss to the buyer as well as the seller.

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Many buyers purchase in the West and Southwest for shipment to their places of feeding and maturing, and others purchase to ship to the northern ranges for grazing. Their interests are interwoven, and I may say the prosperity of the West is hinged to a large measure on the prosperity of the live-stock business.

The demand is universal for a law which tells us what the railroad's duty is; which helps them to perform that duty and enables us to compel it. That is why we are here.

In my possession, as president of the Cattle Raisers' Association of Texas, I have resolutions which have been passed at every convention for several years, by which I have been directed by that association to use our utmost endeavors to secure a law of the kind mentioned.

Preparatory to presenting to you the facts, I bring with me letters from many of the most reliable men of the country which show the injurious practices of the railroads in the failure to furnish cars and to promptly transport cattle, which I wish you had time to read, but to save your time and patience I submit a synopsis of a few of them, pointing out the character of the bad service and the necessity for a remedy in cases of interstate shipments, which serve to illustrate conditions which nobody denies, and which if you desired could be proven by thousands of witnesses.

I have a communication from Robert Driscoll, of south Texas. He shipped in 1907 about 300 cars of cattle, commencing in January. His last shipment was made on the 18th of December.

He endeavored to ship as many of these cattle as possible during February, March, April, and May.

Had cars usually ordered thirty to sixty days before dates of shipment. In April, May, and June he had standing orders for as much as 20 cars any time the railroad could furnish them. His cattle were fat and the market good.

In April he got 3 cars, in May 3 cars, and in June 37 cars, and this is a fair sample of the service he has received as regards delivery of cars.

He further states he loaded his cattle thirty-six hours run from the Fort Worth market, less than 500 miles distant, and they should have made the shipment without unloading; instead of this they never failed to unload from one to three times in transit to market.

From W. H. and R. J. Jennings, Laredo, Tex., I have the statement they ordered 35 cars in January, 1907, to load April 1. The shipment was ready at the date mentioned, loading one train at the time ordered; the rest he held seventeen days before he got cars.

By that time, holding them with no grass and little water, the cattle had shrunk in condition to such an extent that they were not suitable for market and had to be shipped to grass.

Mr. A. B. Robertson, of Colorado, Tex., states on April 8, 1907, he put in an application for 20 stock cars at Plainview, Tex., for shipment to Kansas City on October 20. His cattle were driven to Plainview, reached there in time, and were ten days waiting for the cars.

Mr. J. J. Welder, of Victoria, Tex., states that during the year 1907 he made many applications for cars, and the answers he received from the agent were "will furnish them if we can." The result was that he was compelled to wait the pleasure of the railroads, and in all cases Mr. Welder says they were never on time.

Mr. J. D. Jackson, of Alpine, Tex., says on April 16 he ordered 60 cars to be loaded on April 25 and did not receive any information about these cars until May 25, when they delivered 40, and on May 29 received the balance of this order.

This delay cost 100 head of good Hereford cows. They were held on poor grass and little water.

His damages were estimated at \$2,000 alone. The buyer who shipped the cattle lost heavily in transit because of the emaciated condition of the cattle delivered, having been held so long with no feed and little water.

Mr. A. H. Tandy, of Hargrave, Tex., ordered 30 cars about the 25th of April, 1907, over the Pecos Valley Railroad for May 10. On May 10 he had the cattle ready and held them under herd waiting for cars until June 9. By that time they had lost in flesh, quite a few had died, and there were only 14 cars in condition to stand shipment.

They were shipped from Riverton to Canadian, 340 miles. A portion of them reached their destination on the 12th and some on the 14th. His damages were several thousand dollars.

Mr. L. T. Wilson, of Kansas City, Mo., shipped 400 cars of cattle during the year 1907. Three thousand of these cattle were shipped from Quero, Tex., to Indian Territory or Oklahoma points. He states the railroads failed to furnish cars for shipment after being inconvenienced and waiting from fifteen to forty-five days after the date of the order for cars was given.

He further states the distance from Mannford to St. Louis is 449 miles, one of the points from which he shipped from Indian Territory to St. Louis. This distance the railroads should make within thirty-six hours.

He states out of the whole summer shipments there were but three trains reached their destination on time. His damages on the 10,000 cattle shipped were very great.

J. D. Jennings & Co., of Kenney County, claim to have been damaged \$6,663 in their shipments from Spofford, Tex., on about 100 cars to the Fort Worth market and the Territory, damage arising from railroad failing to furnish cars and to the service after cars were furnished.

W. E. Halsell, of Vinita, Okla., states he ordered 95 cars to be shipped from Bovina to Kansas City, driving 1,250 head of cattle to the shipping pens, holding them two weeks, and then took them back to his ranch and turned them loose. These cars were ordered in October.

On November 12 they gave him 18 cars, which were all he was able to get during the shipping season out of the 95 cars ordered. He estimated his damages as \$12,500.

J. W. Gibson, of Beggs, Okla., on February 15, 1907, placed an order with the Pecos Valley Branch of the Santa Fe system for 160 stock cars to be loaded on April 14, 15, and 16, respectively. He arrived at the shipping pens on April 13. Was compelled to hold his cattle on bad water and practically no feed until April 28 before securing cars to ship.

He states the railroad agent told him when he placed the order there were practically no cars booked for cattle from that locality.

This is only one instance of a large number he cites in his communication.

Fowler & Son, of Maple Hill, Kans., state in their communication that their cattle the first part of October were all ready to go to market and sell as prime exporters.

They began shipping on the 17th of October and found it impossible to ship out as they had intended on account of not being able to get cars.

Instead of shipping the cattle in October as they wished to do they did not succeed in shipping them until the middle of November, causing a loss of \$10 per head, as they were 1,500-pound steers.

On the 15th of October they ordered cars to ship from Channing, Tex., to Maple Hill, Kans. The cattle were gathered ready to ship by the 20th of October.

Cattle were held for over two weeks. Could get no assurance from the railroads as to when they would ship them out. Finally, after holding through a bad snowstorm, they furnished cars on November 10.

Cattle had to be gathered a second time at a loss of at least 100 pounds per head. They consider their loss on this particular shipment at least \$5 per head.

In January, 1907, I ordered 100 cars to load at Victoria, Tex., for Okmulgee, Ind. T., on April 10, 11, and 12. These cattle were ready for loading on the 10th. No cars in sight, and it was May 5 before we finished loading these cattle.

In February I ordered 75 cars, destination Okmulgee, Ind. T., to be loaded at Encinal on April 15. Cattle were ready at the specified time, and held until April 25. On that date I made a written application for cars in full compliance with the articles 4497, 4498, 4499, and 4500 of the Revised Statutes of the State of Texas, paid the agent 25 per cent of the published tariff rate from Encinal to Fort Worth, being compelled to change my shipment from interstate to State shipment to avail myself of the above-mentioned statute. This action brought the cars within the prescribed time.

FORT WORTH, TEX., *January 23, 1908.*

DEAR SIR: You are doubtless aware of the fact that the Cattle Raisers' Association of Texas has caused to be introduced in both Houses of Congress—in the Senate by Senator Culberson and in the House by Congressman Smith—a bill commonly called "Transportation and car service bill."

I expect to go to Washington during the first part of February to appear before the Committee on Interstate and Foreign Commerce to assist in securing the passage of this bill, and I urgently ask your cooperation in this matter by writing me a letter giving specific information as regards any shipments you made or endeavored to make during 1907.

State in this letter the exact date you ordered cars—the number of cars—and give if you can the reply you received from the railroad agent or superintendent from whom you ordered the cars. Also give the exact date the cars were furnished, if furnished at all—when loaded—and how much time was consumed between loading and reaching the market. Give approximately the distance from your loading place to market.

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If you failed to secure cars at all, state how long you held your cattle before turning them loose; also give briefly the inconvenience, financially or otherwise, you were put to by the failure of the railroads to furnish said cars, and the approximate damages you sustained by reason of such failure. If convenient, make oath to the statement you send. If not, send it anyway.

Please do not fail to write your Representatives in Congress immediately upon receipt of this letter an urgent request to support this all-important measure. It will take united effort on our part to secure its passage during the present session of Congress.

Yours, very truly,

(Signed) **IKE T. PRYOR,**
President.

P. S.—If you will not act on the suggestions contained in the above letter please hand same to someone who will.

STATEMENT OF MR. A. E. de RICQLES, GENERAL MANAGER AMERICAN LIVE STOCK AND LOAN COMPANY, DENVER, COLO.

Mr. DE RICQLES. I want to answer a question that one of the gentlemen of the committee put. The live-stock rates have all been increased from 15 to 25 per cent—from 10 to 18 per cent in some sections.

Mr. WANGER. In what period?

Mr. DE RICQLES. In the last five or six years. They have increased them in various ways—by changing rates from \$1 per car to a cent per 100 and by adding a terminal charge.

Mr. HUBBARD. When was the last increase?

Mr. DE RICQLES. Some of my receipts have been increased in the last thirty days. We do not mind that so very much, however, if they will give us the service.

Now I want to take the map and explain an answer to a question put by a member of the committee. Down in this country, Arizona, New Mexico, and Texas, is the country where a great many cattle are raised. The country can be divided into a breeding country and a grazing country. Here in the northwest [indicating] is where some cattle are fed and matured. Now, in the spring of the year there is a very large amount of young cattle from the Southwest in the grazing country and in the feeding country. A branch of the Santa Fe line runs into New Mexico and back into Texas, called the Pecos Valley road. That road of itself has very few cars to take care of the cattle originating on the road, and naturally they could not exchange with the northern lines, so the Burlington road commences months before the movement of stock to send cars south to the Pecos Valley road through Denver. They go down to Amarillo for delivery to the Pecos Valley for loading back over the same route to the northwest. Now, what does the Pecos Valley road do? I want to show you. The Pecos Valley road has done this in cases to my knowledge: They have taken the cars that come from the Burlington road and sent down there through Denver and loaded them east by the way of Amarillo and their line to Kansas City. And there is where we want a law that will compel this railroad not to abuse the equipment provided for a certain line of business. This business suddenly ends about the 1st of June: that is, we can not take those cattle up later than the 1st of June because the grass is late and we can not turn them out.

Mr. HUBBARD. In other words, those cars are sent down there for the purpose of taking care of that business, but they are diverted from that purpose to some other purpose?

Mr. DE RICQLES. Yes; for a wrong business.

There is just one other point that I want to bring out, and I am going to ask the permission of the chairman of this committee to file a statement a little later on the subject, and that is, why the live stock men take such an active part in this question of railroads. The live stock men are absolutely dependent upon the railroads for their very existence. There is no other business that is so intimately connected with the business of transportation as the movement of live stock, because the farmer himself, Mr. Chairman, is not the producer of what he feeds. In 60 or 75 per cent of the cases the live cattle which enter into our food supply are raised in some other section, perhaps as yearlings, and then they are removed perhaps a thousand miles to where they become two or three year old steers, and then they are removed perhaps another thousand miles to where they are fed, and then still another thousand miles to where they are exported; and therefore we are intimately connected with the railroads all the time. And furthermore, there is a very great quantity of feed and grain and beet-sugar pulp and beet tops and grass on the range that can in no way be marketed except through a finished animal—by a sheep, or by cattle, or something else of that kind; and that is why we are coming to you and asking you to help us. It is not merely the cattle industry that is talking to you, but also the men who raise grain and have farms and raise sugar beets and have cattle on the range. The railroad men between themselves may solve all these questions. It is not for us to tell them how to exchange their cars, for example, at St. Paul. The cars go to Milwaukee and the Northwest, and they say, "How many cars are you going to take out on our line to Chicago in the fall?" They take those cars out and never bring them back. They do not carry cattle in them, but instead they may load them with lumber and send them out to the Pacific coast. They load them up with coal and coke. They abuse the privilege, and when they get them from another road they do as the Pecos Railroad, that I referred to a moment ago, does down in the South, and send them away off entirely from the purpose they were sent down for.

Mr. Chairman and gentlemen, I ask the privilege of filing a statement with you.

The CHAIRMAN. Very well; that may be done.

**STATEMENT OF MR. JOHN B. DAISH, OF WASHINGTON, D. C.,
REPRESENTING THE NATIONAL HAY ASSOCIATION AND GRAIN
DEALERS' NATIONAL ASSOCIATION.**

Mr. DAISH. Mr. Chairman and gentlemen, I represent on this occasion the National Hay Association, an organization of producers, shippers, and dealers in hay, aggregating about 970 in number and scattered throughout many States and Territories. I also speak with authority for the Grain Dealers' National Association. You have heard of the trials and troubles and tribulations of the live-stock people. To the same extent, except at the terminal markets, the hay and grain people have the same trials, troubles, and tribulations.

The two associations urge upon this committee the favorable recommendation of this bill. It has received careful consideration by the two associations, and we urge its passage, believing that the present troubles can be easily rectified by a compliance with the proposed measure.

It has occurred to me that perhaps at sometime during the discussion of the bill some one will question the authority of Congress to pass such a law as is now proposed, and with that idea in mind I have prepared a brief on this subject. I will not trouble you or tire you to read it, but I will ask you for leave to file it now.

Mr. COWAN. Mr. Chairman and gentlemen, on behalf of our committee I wish to say that we are very much obliged to you. You have been extremely courteous to us, and I want to say that we are very appreciative of your courtesy and attention.

The CHAIRMAN. We are gratified at having had the pleasure of hearing you.

Mr. STEVENS. Yes; their discussion has been full of valuable information.

Mr. RICHARDSON. I would like to suggest with reference to the hearings that we would like to have enough copies printed so that these gentlemen may get some of them themselves.

The CHAIRMAN. That will be done.

Following is the memorandum referred to:

Memorandum on the authority of Congress to enact a bill entitled "A bill to require railroad companies engaged in interstate commerce to promptly furnish cars and other transportation facilities, and to empower the Interstate Commerce Commission to make rules and regulations with respect thereto, and to further regulate commerce among the several States (S. 3644, 1st sess., 60th Cong.), submitted by John B. Daish on behalf of the National Hay Association.

Concerning the right of the Congress to enact a reciprocal demurrage law, so called, I beg to submit, car-lot freight only being considered, the following observations from a legal point of view:

I. By the term reciprocal demurrage I understand that by law or by means of rules promulgated through an administrative body which has been duly authorized by law so to do, it shall be provided that the carrier which fails to furnish equipment to a shipper within a specified time after request for same, or shall fail to promptly move from point of origin the equipment when loaded, or shall fail to move the car forward at a specified rate per day, or shall fail to place within a specified time loaded cars upon proper unloading tracks, or shall fail to give prompt notice to the consignee of the arrival of the goods, shall be amerced by a certain sum payable to the shipper, consignee, or other party, as interest may appear, provided that each of the several acts are not circumscribed by unavoidable causes, the several specific lengths of time and the rate of speed being denominated "reasonable" for all classes of traffic and under all circumstances in which the carrier may find itself, except the unavoidable accidents, or the like, above referred to.

II. (1) The basis upon which reciprocal demurrage laws have been enacted in the several States has been the "police powers" of the States. This term has been defined by Cooley (Constitutional Limitations, 7th ed., p. 829) as follows: "The police power of a State, in a comprehensive sense, embraces its whole system of internal regulation, by which the State seeks not only to preserve the public order and prevent offenses against the State, but also to establish for the intercourse of citizens with citizens those rules of good manners and good neighborhood which are calculated to prevent the conflict of rights and to insure to each the uninterrupted enjoyment of his own so far as is reasonably consistent with a like enjoyment of rights by others.

"This police power of the State extends to the protection of the lives, limbs, health, comfort, and quiet of all persons, and the protection of all property within the State." (Redfield, Ch. J., in *Thorpe v. R. R.*, 27 Vt., 140, 149.)

The police power in our American constitutional system has been left wholly with the individual States, and the Congress has no power, expressly or by implication, to take away any or all of it. (*U. S. v. De Witt*, 9 Wall., 41.)

(2) The police power of the United States extends territorially only to those places where the legislative authority of the Congress applies, such as the District of Columbia. "Within State limits it would have no constitutional operation. This has been so frequently declared by this court, results so obviously from the terms of the Constitution, has been explained and supported on former occasions, that we think it unnecessary to enter again upon a discussion." (Chase, Ch. J., in *De Witt v. U. S.*, 9 Wall., citing License cases, 5 How., 504; Passenger cases, 7 How., 283, and the cases cited.)

III. If the Congress can constitutionally provide for reciprocal demurrage it can only do so under one of the enumerated powers of the Constitution: "To regulate commerce with foreign nations and among the several States, and with the Indian tribes."

Commerce, in its constitutional sense, is more than traffic. It includes commercial intercourse in all its branches, and to regulate this means to prescribe the rules for carrying on such intercourse. (*Gibbons v. Ogden*, 9 Wheat., 1.)

The power committed to the Congress by the Constitution does not extend to commerce wholly within the State. (*Gibbons v. Ogden*, supra.)

The limitations upon the power of the Congress to regulate or prescribe rules by which commerce is to be governed are only those which are to be found in that instrument. (*Gibson v. Ogden*, supra.) There are no limitations to be found in the Constitution of the proposed power except those powers reserved to the States, which include the police powers referred to above.

IV. As the individual States can not make rules or regulations which are a burden upon interstate commerce, so the Congress can not make rules and regulations which affect the internal powers of the States.

That a so-called reciprocal demurrage law enacted by a State can not apply to interstate commerce is well settled by the recent decision of the Supreme Court in the case of *Mayes v. R. R.* (200 U. S., 321). In that case a shipper sued to recover a specific penalty per day because cars had been withheld from him, the shipment being an interstate one. The decision of the courts below was reversed by the Supreme Court of the United States upon the ground that such a regulation was an interference with interstate commerce, and, apparently, on the further ground, that the statute did not provide for unusual circumstances which might arise in connection with the carrier's business. This decision, it seems to me, was based by the Supreme Court upon this twofold ground.

The complement of the case is clear. The Federal Government can not pass a regulation which will infringe the police powers of the individual States. Numerous decisions are to the same effect.

V. (1) An important question to be determined in addition to what I have heretofore said is, When does a shipment become interstate commerce? A review of all the decisions necessarily leads to the conclusion that whenever property has begun to move as an article of commerce, from a point in one State to a point in another State, then it becomes the subject of interstate commerce and is under the power of the Congress to regulate it. (*Gilman v. Philadelphia*, 3 Wall., 724; *The Daniel Ball*, 10 Wall., 557; *Coe v. Errol*, 116 U. S., 517; *R. R. v. Penna.*, 136 U. S., 114; *R. R. v. Penna.*, 145 U. S., 192; *U. S. v. Knight*, 156 U. S., 13.)

The movement does not begin until the articles have been shipped or started in their transportation (*Coe v. Errol*, supra); the preparation of the article for transportation is not sufficient (*U. S. v. Boyer*, 85 Fed., 425); nor the intent to transport (*Coe v. Errol*, supra); it must be actually delivered to the carrier for transportation. (*U. S. v. Boyer*, supra.)

(2) Another important question to be determined is, When the goods cease to be the subject of interstate commerce? The law upon this subject is that when the goods have been so acted upon that they have been incorporated in and mixed with other property of the State they cease to be subject to the regulation of the Congress. (*Gibbons v. Ogden*, supra; *Brown v. Md.*, 12 Wheat., 419; *Welton v. Mo.*, 91 U. S., 275; *Howe Mach. Co. v. Gage*, 100 U. S., 676; *Tierman v. Rinker*, 102 U. S., 123; *Brown v. Houston*, 114 U. S., 622; *Robbins v. Shelby County Taxing Dist.*, 120 U. S., 489; *Emert v. Mo.*, 156 U. S., 296.) Some decisions hold that the shipment is incorporated into the property of the State when it has been delivered to the consignee. (*Bowman v. R. R.*, 125 U. S., 456; *Rhodes v. Iowa*, 170 U. S., 412; *Leisy v. Hardin*, 135 U. S., 100; *Vance v. Vandercook*, 170 U. S., 438.) Some decisions go so far as to hold that it is required that some of the goods shall have been sold after they have arrived within the State of their destination. It is doubted, however, that sale is a requirement, but it is clear that a sale of a part or all of the goods in the State where they are destined and delivered destroys their character as interstate commerce.

In short, under the most favorable interpretation it appears from the cases that goods do not become subjects of interstate commerce prior to the time they are loaded upon vehicles for the purpose of transporting them to another State, if the time is not post-

poned until the actual movement begins, and that they remain interstate commerce and are subject to Federal control until they come into the possession, actual or constructive, of the consignee, if not until to the time of the sale thereof, in whole or in part.

VI. The power of the Congress to regulate interstate commerce includes not only as the object of such regulations it may deem wise and prudent to enact those goods and things which are the subjects of interstate commerce, but as well the instrumentalities and facilities which are used in such traffic, trade, and intercourse. (*Gibbons v. Ogden*, 9 Wheat., 1, 217; *The Daniel Ball*, 10 Wall., 557; *Addyston Pipe*, etc., Co. v. U. S., 175 U. S., 239.)

Under its power to regulate commerce it has been held that the Congress is not limited in its purposes, but may legislate as well for the advancement of commerce as for the promotion of other objects which are national in their concern. (*U. S. v. The Williams*, 2 Am. L. J. (Hall's), 255; *U. S. v. Knight*, 156 U. S., 12.)

The Congress in the exercise of its power to regulate commerce has seen fit to exercise its right in the following ways: To authorize or construct roads and highways; to construct or authorize individuals to construct railroads crossing State lines; to provide rules for qualifications, duties, and liabilities of employees and others on railway trains engaged in interstate commerce; for regulation of rates and charges for the transportation of interstate freight; providing against illegal means of making rates, as by joint traffic associations; enacting safety appliance laws governing equipment of cars used in interstate commerce; to authorize and regulate the erection of wharves, bridges, and piers as instrumentalities of interstate commerce.

VII. It needs, however, to be recalled that the Congress has already provided, to a certain extent, for quasi-reciprocal demurrage rules by providing in the rate law (act June 29, 1906), "that the term 'transportation' shall include cars and other vehicles and all instrumentalities and facilities of shipment or carriage, irrespective of ownership or of any contract, express or implied, for the use thereof * * *" "and it shall be the duty of every carrier, subject to the provisions of this act, to provide and furnish such transportation upon reasonable request therefor."

The shipper is thus left to pursue his remedy. It is necessary to show that the time during which facilities were withheld from him is unreasonable, and his damage, for the law also provides: "Nothing in this act contained shall in any way abridge or alter the remedies now existing at common law or by statute, but the provisions of this act are in addition to such remedies" (as amended March 2, 1889, and February 8, 1895).

Further, a carrier which shall fail to furnish transportation as thus defined is subject to a penalty provided in section 10 of the act (as amended March 2, 1889), reading: "That any common carrier subject to the provisions of this act, * * * who * * * shall willfully omit or fail to do any act, matter, or thing in this act required to be done, * * * shall be guilty of a misdemeanor, and shall, upon conviction thereof in any district court of the United States within the jurisdiction of which such offense was committed, be subject to a fine not to exceed \$5,000 for each offense."

VIII. Two reasons are present, showing that the Congress has the right under the Constitution to provide for the interchange of cars between carriers engaged in transporting interstate freight:

1. The power to regulate commerce—the power to prescribe the rules by which such commerce shall be governed—includes the making of regulations concerning the instrumentalities used in such commerce.

2. No State can constitutionally provide for the interchange of cars for the purpose of loading with interstate freight. As was said recently by Judge Speer, the power to regulate all commerce, intrastate, interstate, and foreign, rests somewhere. If a power does not rest in the Congress it rests in the several States. I take it, therefore, that as a State can not provide for the interchange of cars to be used in interstate traffic, for the manifest reason that such regulations would infringe the rights granted by the Federal Constitution, the Congress must (for the reason above stated) possess adequate power in this behalf and for this particular purpose.

The limits of the police powers of the States have recently been delineated in *Jacobson v. Mass.* (197 U. S., 11): "According to settled principles, the police power of a State must be held to embrace, at least, such reasonable regulations established directly by legislative enactment as will protect the public health and the public safety. *Gibbons v. Ogden*, 9 Wheat. 1, 203. It is equally true that the State may invest local bodies called into existence for purposes of local administration with authority in some appropriate way to safeguard the public health and the public safety. The mode and manner in which those results are to be accomplished is within the discretion of the State, subject, of course, so far as Federal power is concerned, only to the condition that no rule prescribed by a State, nor any regulation adopted by a local governmental agency acting under the sanction of State legisla-

tion, shall contravene the Constitution of the United States, nor infringe any right granted or secured by that instrument. A local enactment or regulation, even if based on the acknowledged police powers of a State, must always yield in case of conflict with the exercise by the General Government of any power it possesses under the Constitution, or with any right which that instrument gives or secures." (Gibbons v. Ogden, 9 Wheat. 1, 210, 6 L. ed., 23, 73; Sinnot v. Davenport, 22 How., 227, 243, 16 L. ed., 243, 247; Missouri, K. & T. R. Co. v. Haber, 169 U. S., 613, 626.)

I therefore conclude:

(a) Congress has no constitutional right to provide for a reciprocal demurrage law in so far as it relates to the furnishing of transportation facilities or the movement thereof in intrastate traffic, such power being exclusively in the several States.

(b) That the Congress has a right to provide for a reciprocal demurrage law in so far as it shall relate to the withholding of cars and facilities and instrumentalities of carriage, upon the ground that it can regulate (prescribe rules by which they shall be governed) such facilities.

(c) That the Congress has a right to provide for reciprocal demurrage in so far as it shall relate to the movement of cars and other facilities and instrumentalities of carriage in interstate commerce, being a proper regulation of interstate commerce, upon either or both of two grounds—the power of the Congress to regulate the goods after they begin their transportation or its power to regulate the vehicles containing them.

(d) That the Congress has a right to provide for reciprocal demurrage in so far as it shall relate to the prompt placing of cars, notification of arrival by the carrier, and the discharge of the cars upon either or both of the grounds just mentioned.

(e) That such a law must, however, in my judgment, except expressly or by implication from its operation unusual and unprecedented demands, unavoidable accidents, and acts of God.

(f) That Congress only has the right to prescribe for the interchange of cars in interstate commerce, that power being denied to the States.

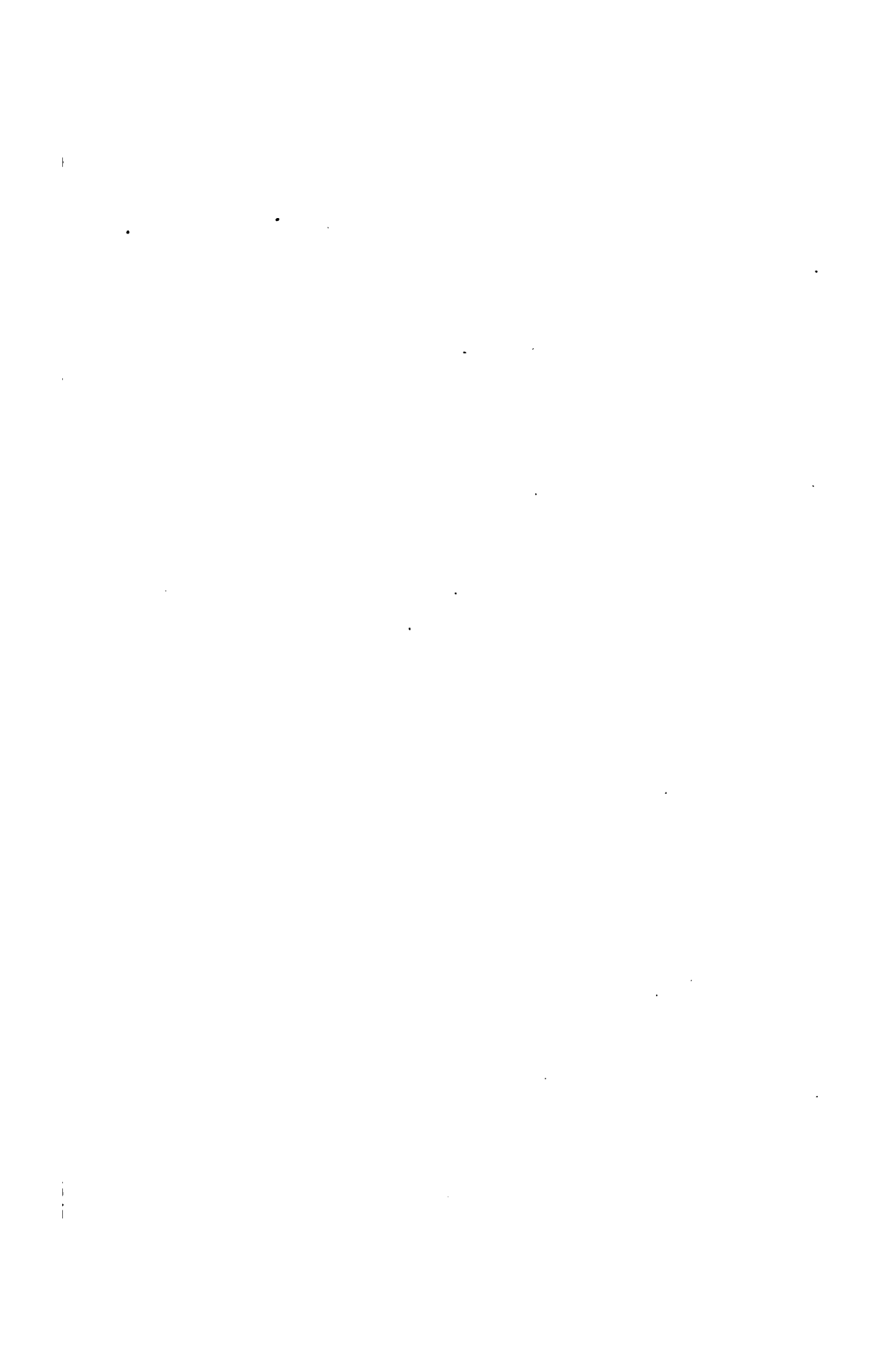
(g) Having such power, the Congress can pass such legislation as will effect the purposes sought to be accomplished and provide for the punishment, by fine or otherwise, of those who fail to comply with the requirements.

(h) It seems that Congress, having provided that such transportation facilities shall be furnished, that cars shall be moved, and similar provisions—all to be within a reasonable time, or at a reasonable rate,—it may leave to an administrative body to make rules and regulations as to the details of what shall in each instance be a reasonable time, reasonable rate of movement, etc. In any event, such has been the practice. Congress makes the general rule and permits other bodies (its creatures) to provide for the application of them as to special localities or cases.

JOHN B. DAISH.

WASHINGTON, D. C., February 14, 1908.

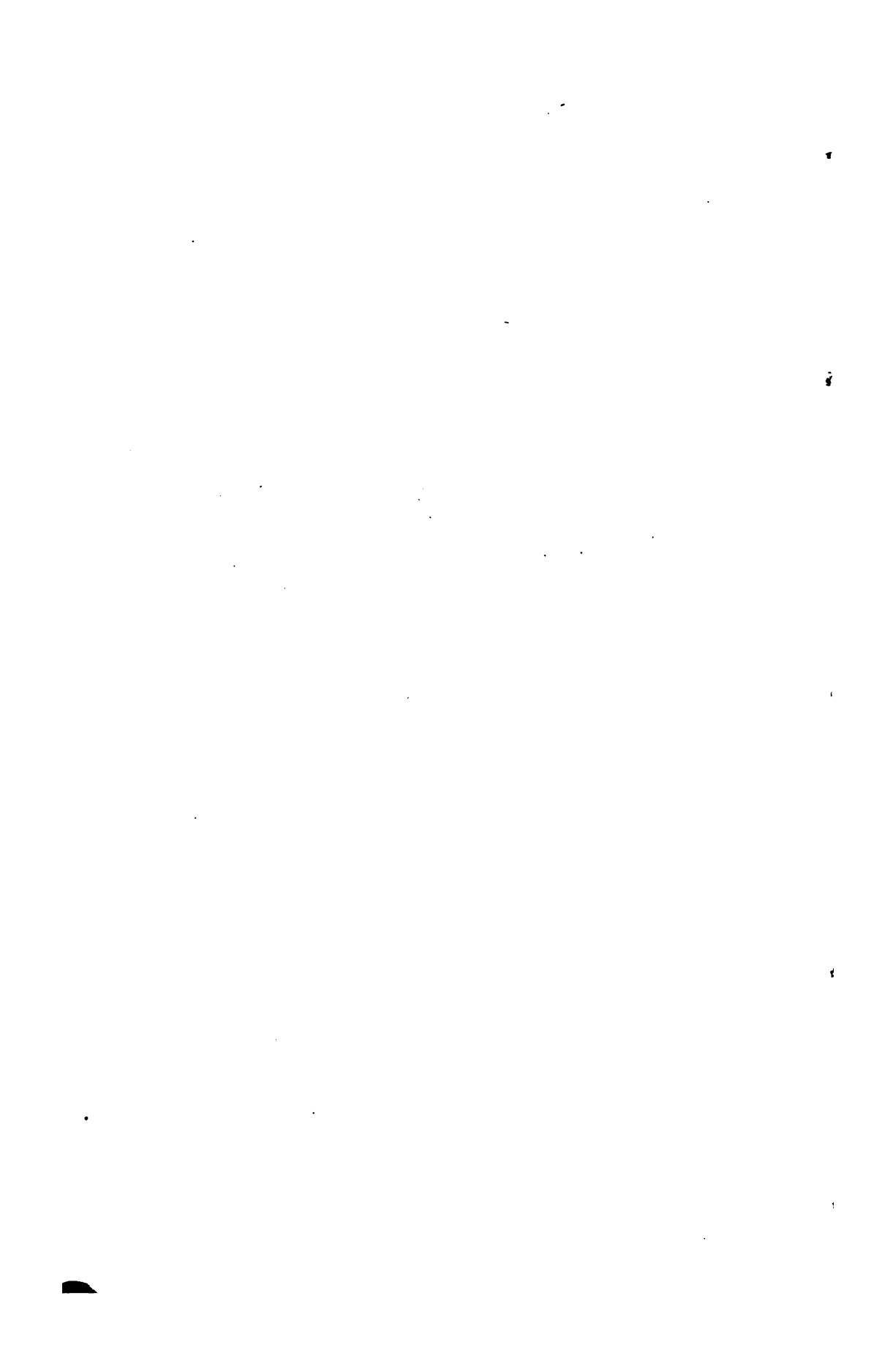




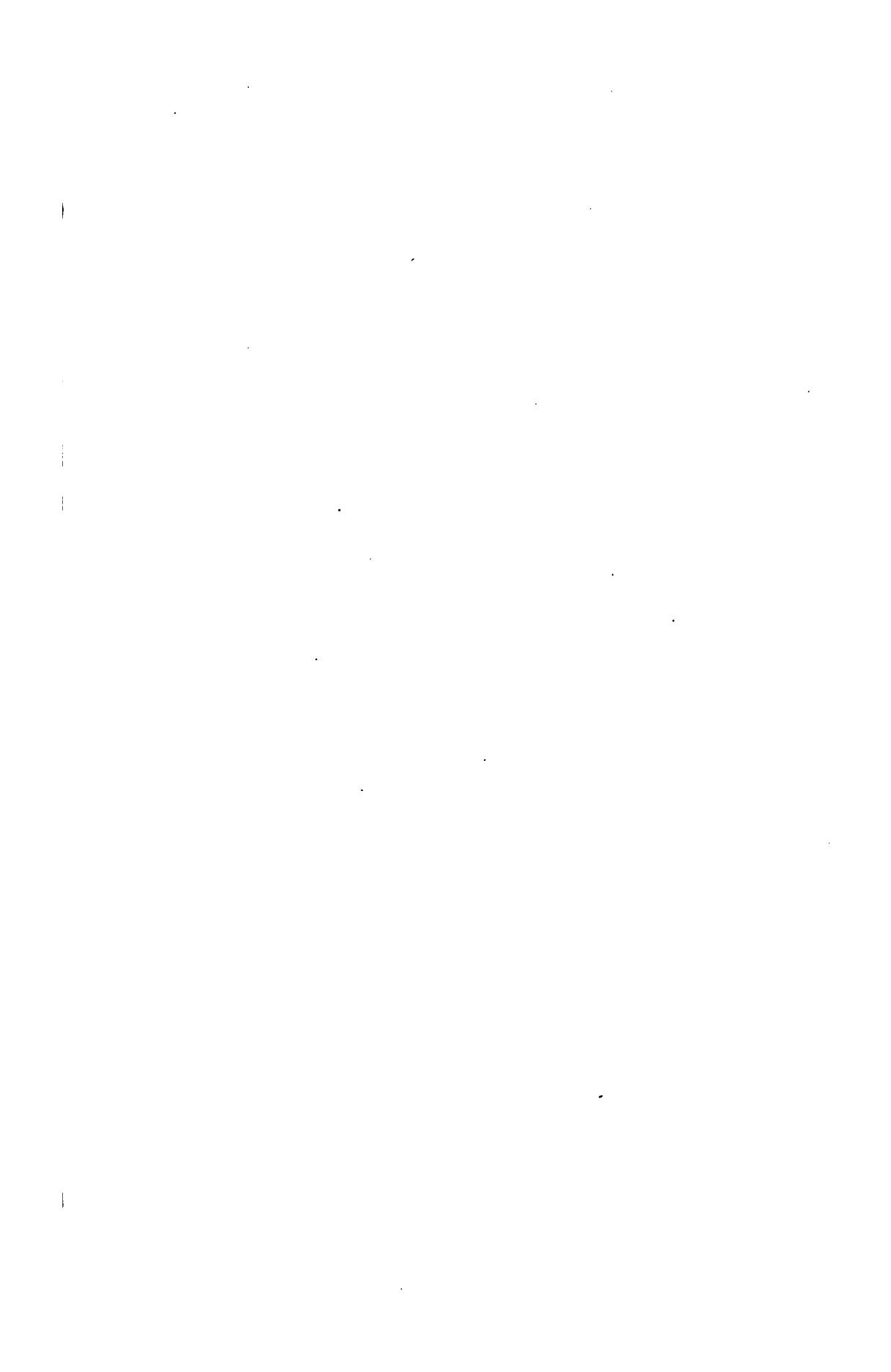


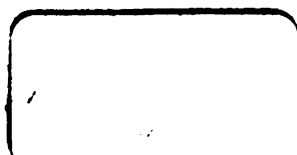






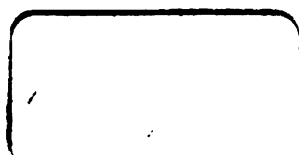












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